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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.594/2000

New Delhi, this 13th day of September, 2000

Hon'ble Smt. Shanta Shastry, Member(A)

Raj Kumar and 53 others  
(All Home Guards) as  
per details/addresses given  
the Memo of parties .. Applicants

(By Shri Vinay Sabharwal, Advocate, not present)

versus

Govt. of NCT of Delhi, through

1. Chief Secretary  
5, Sham Nath Marg  
New Delhi

2. Commandant  
Home Guards, Delhi  
DGHG & Civil Defence  
Nishkam Sewa Bhavan, Raja Garden  
New Delhi-110 027

3. Commissioner of Police  
Delhi Police Hqrs., IP Estate  
New Delhi .. Respondents

(By Shri Rajinder Pandita, Advocate)

ORDER

None was present on behalf of the applicants either in person or through their advocate. However, synopsis of the arguments on behalf of the applicants was submitted on 20.8.2000 by the advocate for the applicants.

2. There are 54 applicants in this case, who were Home Guards. They were engaged under the Delhi Home Guards Rules, 1954. They have been so engaged for last number of years ranging from 12 to 30 years. They have been rendering service with various police stations and all of them have been discharged from service on different dates on completion of tenure of 3 years as stipulated in Home Guards Rules, 1959. Applicants have sought to

set aside the impugned orders of discharge passed by R-2 against the applicants, to grant reinstatement with arrears of wages and continuity of service, to hold and declare them to be civil servants to be in regular service of the respondents and to follow the directives given by this Tribunal in its judgement dated 12.12.97 in OA 1753/97 with other connected OAs.

3. These applicants were engaged on different dates and discharged on different dates as per details in Annexure I to the OA. Photocopies of the identity cards of these applicants have already been enclosed to show validity of tenure of these Home Guards.

4. It is the case of the applicants that they have been continuously working for long periods of 12 to 30 years, still there has been no job security, there is gross exploitation of labour under the garb of voluntary force. They are not even paid what an unskilled worker gets today under the minimum wages act. They get paid Rs.1800 per month. For all practical purposes they are public servants and they have been declared as civil servants by some previous decisions of this Tribunal. As such discrimination vis-a-vis other regular employees amounts to administrative unfairness. The nature of jobs that the Home Guards are performing is much wider than that which was contemplated under the Bombay Home Guards Act, 1947. They are performing various jobs and a majority of them cannot be said to be mere volunteers. It is submitted by one of the applicants, who is employed elsewhere, that the applicants are being engaged as full timers and not permitted to go for any other vocation and they are solely and completely

dependent upon the income arising out of employments as Home Guards. Even though they are appointed for 3 years they are mostly continued beyond 3 years. It has been submitted that this Tribunal in a number of cases pertaining to Mobile Booking Clerks of the Railways had dealt with a similar category of workers whom the respondent-railways described as volunteers but this Tribunal did not agree with the contentions and decided to hold that there is nothing of voluntary character left in engaging those MBCs and proceeded to suggest to formulate appropriate scheme and absorb them in the main body of the Railways. Details of those OAs decided by this Tribunal are given in page 6 of the synopsis submitted by the applicants. Even the Supreme Court dismissed the SLPs filed against those orders of the Tribunal.

5. The learned counsel for the applicants has also relied upon the decision of 1.6.95 in OA No.188/95 in the case of Krishan Kumar vs. Govt. of NCT of Delhi & Ors. as well as in OA No.2423/93 in the case of Reghyir Prasad in OA 2423/95 dated 21.3.97 wherein the Tribunal held that Home Guards are civil servants and this Court has jurisdiction to deal with their case. The same view was held in OA No.1753/97 decided on 12.12.97. The discharge orders issued to the applicants are therefore illegal.

6. The learned counsel argues that the Home Guards are civil servants according to the Full Bench decision delivered in November, 1999 and the latest judgement dated 12.7.2000 in OA 408/99 including the judgement of the Delhi High Court of 26.5.1999 in Mansukh Lal Rawal's

case in CWP No.4286/97. The Hon'ble High Court had directed the respondents to prepare a scheme whereby the arbitrary removal from service is regulated. Contempt petition has been filed in the High Court which is pending. Learned counsel further pleaded that atleast 25 of the applicants in this case have not completed the tenure of 3 years, they have been discharged without any show cause notice and without any opportunity of being heard and without there being any allegation against them.

7. Learned counsel has therefore prayed that the impugned orders of the respondents should be set aside.

8. Learned counsel for the respondents has taken the preliminary objection and stated that the Home Guards are volunteers, there is no master-servant relationship and this Tribunal has no jurisdiction. He submits that the Hon'ble Supreme Court has already decided in the case of Rameshwar Dass Sharma & Ors. vs. State of Punjab & Ors. on 6.3.20 in SLP No.12465/20 arising out of CWP No.3975/89 that the Home Guards cannot ask for regularisation and therefore they are not entitled to any relief. Similar judgement was rendered by the Chandigarh Bench of this Tribunal in OA 1013/88 in the matter of Rai Kamal & Ors. vs. UOI & Ors. along with other connected OAs. This Bench relying on the orders of the Hon'ble Supreme Court in R.D.Sharma (supra) as well as two similar cases already decided by that Bench in OA 1042/93 (Ram Chand & Ors. vs. UOI) dismissed the OAs holding them to be devoid of merit. Learned counsel also cited different judgements of this Tribunal given by the coordinate Benches wherein the judgement of the

Hon'ble Supreme Court has been followed. According to the learned counsel, the present OA is fully covered by the judgements of the Hon'ble Supreme Court as well as of the different benches of this Tribunal. The judgements in the cases of Krishan Kumar and Reghvir Prasad cited by the applicants cannot be applied to the present case because of the judgement of the Hon'ble Supreme Court which was not before the Tribunal at the relevant time.

9. I have heard the learned counsel for the respondents and have also gone through the synopsis given by the learned counsel for the applicants. I have also perused various judgements cited by the parties. In fact Shri Rajinder Pandita, learned counsel for the respondents has produced a copy of the Full Bench judgement and a set of other judgements. Having perused them, I am of the view that the points raised by the applicants have been dealt with at great length by different benches, particularly in the judgement of Chandigarh Bench (supra). I am therefore unable to grant any relief as prayed for.

10. However, I find, as pointed out by the learned counsel for the applicants, that services of about 25 of the applicants were discharged before the stipulated period of 3 years was over. Rule 8 of the Delhi Home Guards Rules, 1959 clearly states that whenever services of the Home Guards are to be dispensed with, one month's notice is necessary in normal course. I also find from the Xerox copies of the identity cards attached to the OA that in some cases the term of 3 years had not expired when they were discharged. Since the respondents were asked to formulate a scheme for the

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Home Guards by the Hon'ble High Court vide their judgement dated 26.8.99, I feel atleast till the scheme was prepared it was not proper on the part of the respondents to have discharged the applicants when 3 years time was not yet over. They should have been allowed to continue with their term till the scheme was formulated by the respondents on 18.4.2000. Each appointment for 3 years is a separate appointment. Therefore, they are entitled to be given notice as per Rule 8 of the Delhi Home Guards Rules, 1959. The respondents are directed that the 25 applicants who had not completed their 3 years term till 18.4.2000 should be considered for re-engagement with consequential benefits till the date the scheme was formulated i.e. till 18.4.2000.

11. In the result the OA is partly allowed as above. I do not order any costs.

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(Smt. Shanta Shastry)  
Member(A)

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