

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A.No. 420/91

Date \_\_\_\_\_ of \_\_\_\_\_ Decision: 31-1-92

Shri Hari Kishan

Applicant

Shri T.C. Aggarwal

Counsel for the applicant

Union of India & Ors.

Respondents

Shri M.C. Garg

Counsel for the respondents

CORAM

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. B.N. DHOUNDIYAL, MEMBER(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*

2. To be referred to the Reporter or not? *yes*

JUDGEMENT

(of the Bench delivered by Hon.Member Shri B.N. Dhoundiyal)

This O.A. has been filed under Section 19 of the Central Administrative Tribunal Act 1985 by Shri Hari Kishan against order dated 12.3.1990 issued by the Commandant Home Guards, New Delhi discharging him from the rolls of Home Guard Organisation with immediate effect.

2. The applicant joined the Home Guard Organisation as a Volunteer on 17th January 1968. He has stated that while he had gone on leave from 12th to 14th of November 1989, Ram Nath Prasad, Section Leader took on duty S/Shri Mahabir Singh and Devi Singh in an unauthorised manner. This matter came to his notice only on Sunday's Parade when he disallowed them any further duty.

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In his explanation Shri Ram Prasad has admitted this fact. The District Staff Office called for the explanation of the applicant and he gave his reply on 16.12.1989. The termination order was issued on 12.3.90 against which he represented on 15.3.90. The applicant has challenged the impugned order on the ground that (a) No order has been passed on his appeal (b) that he has been arbitrarily punished for acts of another person (c) The termination order is not a speaking order. He has prayed for quashing of the impugned order dt 12.3.90 and reinstatement in Home Guards service with all the consequential benefits.

3. The respondents have stated that the two home Guards mentioned above were taken on duty by the applicant under his own direction or with his connivance. He prepared their duty allowance bills for 10-13 days and himself signed them. He also got an account opened for Shri Mahabir Singh in the Bank of his own company. The applicant was given a chance to show cause against the allegations and it was only after hearing him that he was discharged.

4. We have gone through the records of the case and heard the learned counsel for both the parties. The applicant has relied on a number of decisions and we have duly considered these. Section 6-8 of the Bombay Home Guard Act, 1947 as extended to the Union Territory of Delhi provide for punishment of members for neglect of duty and this includes the power to suspend, reduce or dismiss or fine. The Commandant has also been given power to dismiss any member of the Home Guard, any time, subject to such conditions as may be prescribed, if, in his opinion, the services of such members are no longer required. Rule 10 of the Rules made under the Act provides that a Home Guard can be discharged under Section 1-A of Sections 6-8 of the Act, if the Commandant General was satisfied that such member had committed an act detrimental

to good order, welfare or discipline of the Home Guard Organisation.

5. Home Guards is a voluntary Organisation and except the core members, the volunteers work in some other departments. They are usually appointed for a three years term which is extended from time to time. Their case is, therefore, distinguishable from the other civil posts under the Central Government. It has been held by another Bench of this Tribunal, in Shri Baboo Ram Vs. U.O.I. & Ors (R.A.713 of 1986 decided on 5.5.89) that the Commandant, Home Guard has ample power to discharge a Home Guard at any time subject to provisions of Rule 10. In this case the allegation against the applicant is that he floated the orders and called for duty home guards not listed with the Battalion for 10-13 days and helped one of them to open a Bank account. He was given a show cause notice as also a chance of personal hearing. It is not, however, clear whether the explanation given by the applicant that Shri Ram Nath Prasad had taken the two persons as Home Guards on duty was considered. The order of discharge does not give any reasons and cannot be called a speaking order.

6. In the facts and circumstances of the case, we quash the impugned order dated 12.3.90 in so far it relates to the applicant and direct the respondents to hold a proper enquiry after giving the applicant adequate opportunity to defend himself and pass a speaking order. The applicant will be at liberty to file a fresh application, if so advised, after the issue of a fresh order, in case he feels aggrieved.

7. The above directions shall be complied with within a period of three months from the date of communication of this order.

8. There will be no order as to costs.

*B.N. Dhoundiyal*  
(B.N. DHOUNDIYAL)  
MEMBER(A)

31/1/92

*anand*  
31/1/92  
(P.K. KARTHA)  
VICE CHAIRMAN(J)