

Central Administrative Tribunal, Principal Bench

O.A. 2117/2004

New Delhi this the 5th August, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

Shri Virender Kumar Jain
S/o Shri Rattan Lal Jain
Aged about 48 years
R/o 23 A/8 Gokulpur Gaon,
Loni Road near Daulat Dharam Kaanta, Delhi
And had been as working as Company Commander in
Delhi Home Guards but was suspended in
1998, however till date he has not been reinstated. Applicant

By Advocate: Shri S.S. Tiwari.

Versus

1. Government of NCT of Delhi through
Chief Secretary,
New Secretariat Building,
Near I.G. Stadium, I.P. Estate, New Delhi.
2. Commandant General,
Directorate General of Home Guards and Civil Defence,
Nishkaam Sewa Bhawan, CTI, Raja Garden, New Delhi.
3. Junior Staff Officer (HG)
Directorate General of Home Guards & Civil Defence,
Nishkaam Sewa Bhawan, CTI, Raja Garden,
New Delhi.

Respondents

By Advocate: Shri Vijay Pandita.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicant has filed this OA assailing an order of the Junior Staff Officer (HG) dated 27.8.2003 whereby the applicant's representation for his reinstatement as Platoon Havaldar in the Home Guard Organisation was declined on the premise that under the policy guide-lines issued by the Government of NCT of Delhi, those Home Guard volunteers who have rendered service in the organisation for three years would not be enrolled and the applicant has already served the organisation for three years. The applicant also pray for setting aside an order dated 3.4.1998 whereby the Commandant Home Guards, Delhi, in exercise of the power vested in him under the Bombay Home Guards Act, 1947, as extended to Delhi, had suspended the applicant with immediate effect.

2. Briefly, the allegations are that the applicant was deployed as a Guard in Delhi Home Guard on 5.5.1984 and in due course was promoted as Platoon Havaldar on 8.3.1989. He has alleged that he had rendered unblemished service but the seniors, who were not happy with him, in connivance with one Raj Mani Dubey, got him implicated in a false case of corruption under Section 7 of the Prevention of Corruption Act, 1988. A FIR was registered on 20.5.1997 and he was also placed under suspension with effect from 3.4.1998. The representation of the applicant against this suspension had been rejected. The applicant was finally acquitted in the criminal case on 2.5.2003. Since then, his representation for his reinstatement has not borne any fruit. He prayed for not only his reinstatement, but also promotion and consequential benefits at par with his junior.

3. The respondents in their counter have raised a preliminary objection that the Tribunal does not have any jurisdiction to admit the OA since the applicant was not in the civil service of the State. It is submitted that the service in Delhi Home Guards was a voluntary service and was for a limited period and that that period is already over so the question of reinstatement does not arise. The intention of the government was to train as many as members of public in civil defence measure so that a large base of trained Home Guards was available in case of a disaster, calamity etc. Bombay Home Guards Act, 1947 has been extended to NCT of Delhi. It is also stated that the Directorate of Home Guards was not a permanent institution. The applicant as such does not have any statutory right to serve permanently in Delhi Home Guards. The question of regularisation of service of Home Guards who had rendered service with the Directorate of Home Guards Delhi has been decided by a Division Bench of Delhi High Court in Mansukh Lal Vs. U.O.I. bearing CWP No.4286/1997 wherein the plea of regularisation of service of Home Guards was dismissed and the government of Delhi, the Director General of Home Guards and the Director Civil Defence, Delhi were directed to formulate a policy for giving them a minimum tenure of service. In pursuance to said direction for enrolment and re-enrolment and discharge of the members of the Home Guards was formulated by the Government of Delhi and circulated vide circular dated 18.4.2000 (Annexure R-2). As per these guide-lines the Home Guards were to be given three years term and they could not be re-renrolled. As a one time measure as per these guidelines, the Home Guards who were in service or who had earlier rendered service

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and were discharged, could be considered for reappointment after a gap of six months from the date of discharge for one more term of 3 years provided they had rendered excellent service, keeping in mind their discipline and conduct in the discharge of their duties as Home Guard Volunteers. In April, 2002 the applicant's name was not on the rolls as he was facing a criminal trial; he could not be considered and cannot be considered now for another term of three years much less of reinstatement with seniority and back wages as it is not a government service. The applicant was suspended from duty on account of a case of corruption registered against him by the CBI in May, 1997. He was placed under suspension and was subsequently discharged. Merely because he had been acquitted in a criminal case would not entitle him to be enrolled in Home Guards for another term. Other claims of the applicant were also repudiated.

4. Learned counsel for the parties have addressed arguments advanced on the point whether this Tribunal has jurisdiction under Section 19 of the Administrative Tribunals Act, 1985 (the Act) to admit this OA.

5. A person aggrieved by any order pertaining to any matter, which is within the jurisdiction of this Tribunal may make an application under Section 19 for redressal of his grievances. The meaning of the word 'order' has also been explained in this provision. Section 14 gives jurisdiction, powers and authority to the Tribunal in the matter relating to, inter alia, the service matter of a person appointed to any civil service or any civil post in Union of India. Section 15 gives similar jurisdiction in the matter relating to the service matters of the State Government employees. The clause (q) of Section 3 of the Act defines the service matter as all service matters pertaining to service in connection with the affairs of the Union or any State etc. etc. The applicant is the Home Guard and claims to be holding a civil post and in the service of the Government of NCT of Delhi. The moot question is whether he is in civil service or holder of a civil post in the government of NCT of Delhi so as to extend jurisdiction of the Tribunal in admitting OA under Section 19 of the Administrative Tribunal Act.

6. Before the instant OA was filed, the applicant had approached Delhi High Court in Writ Petition (C) 6406/2003 which was dismissed as withdrawn since the applicant wished to challenge the suspension order by filing the OA before this Tribunal. Leave for it was granted by the High Court by order dated 4.8.2004. The applicant as such has filed

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the present OA. Nothing on merit was decided as to whether the OA was maintainable and whether the Tribunal has jurisdiction, power or authority to decide it or not. The learned counsel for the applicant has submitted that the Hon'ble Court allowed the applicant to withdraw the Writ Petition and granted leave to file the OA before the Tribunal when it was brought to the notice of the court that the OA would be the remedy available for redressal of the grievance of the applicant pleaded in the Writ Petition. Anyhow, the question whether the OA is maintainable before the Tribunal was left open since it was not considered and decided by the Hon'ble Delhi High Court.

7. The applicant was working initially as a Guard and later as Platoon Havaldar in the Home Guards Volunteer Organisation in Delhi which has been established in accordance with Bombay Home Guards Act, 1947 application of which had been extended to the Union Territory of Delhi. The Home Guards, as per the provision of the Act, is a voluntary body and the members of the body are to discharge such functions and duties in relation to the protection of persons, the security of the property and the public safety as may be assigned to them in accordance with the provisions of the Act and the rules made there-under. The Commandant was empowered to call out a member of the Home Guards for training or to discharge any of the functions or duties assigned to Home Guards in accordance with the provisions of the Act and the Rules. While performing duties, these Home Guards are to have same powers and protection as an officer of police and they could not be prosecuted in discharge of their functions and duties as Home Guards without the previous sanction of the District Magistrate. They are to be placed under the control of the officers of the police force. They are to be treated as members of the Home Guard and while discharging functions under the Act are to be deemed as public servants within the meaning of Section 21 of the IPC. They are not disqualified for being chosen as and for being a member of any local authority merely because of there being a member of the Home Guards. The term of office of the Member of the Home Guards is restricted to three years and it is terminable by the Commandant General or the Commandant even before the expiry of this term by giving one month's notice or without such notice, if such member is found to be medically unfit to continue as a member of Home Guards. The age limit for such engagement was 60 years, which was relaxable at the discretion of the Commandant General or the Commandant. They are

also subject to discipline and are supposed to obey every order of his superior etc. The training was also provided to them. A careful reading of the provisions of this enactment shows that Home Guards is a volunteer body where citizen offered their services voluntarily in the service of the society for a short duration of 3 years which could or could not be extended. They were paid some allowance. The member of Home Guards could seek employment elsewhere and may even seek election to local body etc. Considering the history and concept of Home Guards, nature of duties and functions performed by them they cannot be said to be in the civil service of the State/Union.

8. The question whether the Home Guards serving in Delhi were in the service of the State came up for consideration before the Division Bench of Delhi High Court in CWP No.2001 of 2001 titled Ajay Kumar and Others Vs. Government of NCT of Delhi and Others. The Hon'ble Division Bench after examining the relevant provision of the Act and the judgment of another Division Bench in Mansukh Lal Rawal & Others Vs. U.O.I. and Others in CWP No. 4286 of 1997 decided on 26.5.1999 and the order of the Hon'ble Supreme Court in SLP (Civil) No.12465/1990, another judgment of the Hon'ble Supreme Court in Secretary, Haryana State Electricity Board Vs. Suresh and Others, JT 1999 (2) SC 435, Daily Rated Casual Labour Employed Under P&T Department Vs. U.O.I. & Others, (1988) 1 SCC 122, Air India Statutory Corporation etc. Vs. United Labour Union and Others. Etc., JT 1996 (11) SC 170 and Steel Authority of India Ltd. and Others Vs. National Union Waterfront Workers and Others, (2201) 7 SCC 1, Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and Others, AIR 1994 SC 1638 held "we are of the opinion that the petitioners cannot be said to be the civil servants and as such the Tribunal has rightly held that they have no jurisdiction to entertain the application under Section 19 of the Administrative Tribunals Act". The Writ Petition was accordingly dismissed. The Hon'ble High Court following the ratio of this judgment, dismissed the Writ Petition (C) 2491 of 2002 by order dated 11.1.2005 holding that the issue involved was concluded in the case of Rajesh Mishra and Others Vs. Government of NCT of Delhi and Others (Supra). This Tribunal has also been taking a consistent view that Home Guards were not in civil service of the State. A Division Bench of Delhi High Court in CWP 4286/1997 titled Man Sukh Lal Rawal and Others Vs. U.O.I. & Others decided on 26.5.1999

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also took the same view but directed the Government to formulate a policy for enrolling and re-enrolling the Home Guards and for those whose term could not be extended etc. A Contempt Petition bearing No. 527 of 1999 titled Mansukh Lal Rawal and Others Vs. Director General, Delhi Home Guards and Others was filed complaining that the order of the Division Bench has not been complied with, was dismissed by the Delhi High Court by order dated 26.7.2000 since the policy in question has already been framed and whether the policy conformed to the petitioners' requirement or not was beside the point.

9. This Tribunal in *Raj Kamal and Others Vs. U.O.I. & Others* in OA No.033/01 of 1997 decided on 7.8.1997 held that the Home Guards were volunteers and not employees of the government, therefore, OA was dismissed in limine. In the order, the Tribunal had referred to another order of the Tribunal in OA 1013-CH-88 dated 31.1.1995 in which there was challenge to the termination order of the Home Guards and it was observed that an SLP filed in the Hon'ble Supreme Court was dismissed by order dated 28.2.1995 observing that the appellants, Home Guards could make representation to the Government and not to the Court. The copy of the said order in SLP (C) 4550/1995 dated 28.2.1995 has also been brought on record. Similarly in SLP © 12465/1990 in the case of **Rameshwar Dass Sharma and Others Vs. State of Punjab and Others** decided by the Hon'ble Supreme Court on 30.7.1991 it was held as under:-

"Heard petitioner in person and learned counsel for respondent. The counter-affidavit indicates that 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.

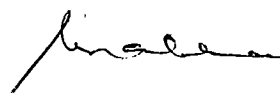
The special leave petition and the interlocutory application are disposed of accordingly. No costs.

10. In all these above judgments, it has been held that the Home Guards Volunteer were not in the service of the State/Union and were not holding civil post under it. As a consequence, the Tribunal did not have jurisdiction to admit their OA.

11. Learned counsel for the applicant, however, has relied upon the judgment of the Hon'ble Supreme Court in the **State of West Bengal and Others Vs. Pantha Chatterjee**

and Others, JT 2003 (5) SC 448 where some part-time volunteers in Border Wing Home Guards who were enrolled in accordance with the West Bengal Home Guards Act, 1962 and claimed parity with their permanent counter parts in the same organisation were granted the benefit. The Hon'ble Supreme Court examined the provisions of the Act applicable the functions discharged by them and the functions and duties of their permanent counter parts and also took note of the fact that they were deployed for a long period of 10 to 15 years discharging the same functions and duties so granted parity in the matter of pay scale and other benefits. As such the question involved was whether Temporary Border Wing Home Guards were entitled to pay parity with permanent Border Wing Home Guards. The question decided, therefore, is quite different from what is involved in the present case. Learned counsel for the respondents on the other hand cited State of West Bengal and Others Vs. Jiban Krishna Das and Others, JT 2002 (4) SC 420 where personnel of National Voluntary Force constituted under the West Bengal National Volunteer Act, 1949 was held to be not in government service to be entitled to the benefit as employees of the State Government. It is also argued that the judgment in State of West Bengal and Others Vs. Pantha Chatterjee and Others (Supra) was of a two Judges Bench and that the judgment in State of West Bengal and Others Vs. Jiban Krishna Das and Others (Supra), which was of a three Judges Bench, was not considered, therefore, was per incurium. Learned counsel for the applicant then referred to the judgment of the Apex Court in the State of Assam and Others Vs. Kanak Chandra Dutta, AIR 1967 SC 884 which was relied upon in the case of Ratan Lal Dutta Vs. State of Tripura and Others of the Gauhati High Court in CR No. 119/1981 which was relied upon by the Calcutta High court in State of Assam Vs. and Others Vs. Kanak Chandra Dutta (Supra).


12. We have examined the case law cited at the Bar and find that the judgments relied upon by the applicant were on distinguishable facts and the peculiarity of the provisions of the Act under which voluntary service was constituted and the fact that there was a long duration for which the volunteer Home Guards had performed the services. In the case of the State of Assam and Others Vs. Kanak Chandra Dutta (Supra) the facts are distinguishable from the case in hand. The question was whether a Mauzadar appointed under the Revenue Law of Assam was in civil services and taking into account the nature



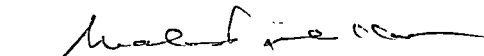
of the duties performed etc. etc. which have been detailed in the order it was held that a Mauzadar was person holding a civil post under the State. There is no similarity with the facts of the present case, therefore, the judgment of the Hon'ble Supreme Court relied upon by the applicant does not advance the arguments of the applicant.

13. The judgments of the Hon'ble Supreme Court and Hon'ble Delhi High Court cited above have clearly held that the Home Guards in Delhi are not in civil service of the State and a holder of Civil Post. As such, the Tribunal has no power, jurisdiction and authority to entertain their application under Section 19 of the Act.

14. As a result of the above discussion, we hold that the Tribunal does not have jurisdiction to admit the OA. The OA is accordingly dismissed. Parties to bear their own costs.


(S.K. Malhotra)
Member (A)

Rakesh


(M.A. Khan)
Vice Chairman (J)