

(2013) 01 DEL CK 0146

In the Delhi High Court

Case No : Writ Petition (C) 3126 of 2001

Anant Prasad and Others

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 24-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0146

Hon'ble Judges : Veena Birbal, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Rishi Kesh and Mr. Rajiv Dewan, for the Appellant; V.K. Tandon, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The factual backdrop leading to filing of the present petition is that the Home Guards organization was raised in India in the erstwhile State of Bombay in the year 1946 for the purpose of assisting the police in controlling civil disturbances and communal riots. With the passage of time the service of the Home Guards was utilized throughout India for purposes as diverse as maintenance of law and order and providing help in natural calamities like floods, fires, famines etc. The Delhi Home Guards organization has been raised under the Bombay Home Guards Act, 1947 as extended to the Union Territory of Delhi in the year 1959. Before we proceed further, it would be relevant to note the following salient provisions of the Bombay Home Guards Act, 1947, as extended to the Union Territory of Delhi:-

2. Constitution of Home Guards and appointment of Commandant General and Commandant -

(1) The Chief Commissioner of Delhi shall constitute for the Union Territory of Delhi a voluntary body called the Home Guards, the members of which shall discharge such functions and duties in relation to the protection of persons the security of property and the public safety as may be assigned to them in

accordance with the provisions of this Act and the rules made thereunder.

Provided that the Chief Commissioner of Delhi may, by notification in the Official Gazette, divide the Union Territory of Delhi into two or more areas and constitute such a volunteer body for each area.

(2) The Chief Commissioner of Delhi may appoint a Commandant of each of the Home Guards constituted under sub-section (1).

(3) The Chief Commissioner of Delhi shall appoint a Commandant General of Home Guards in whom shall vest the general supervision and control of the Home Guards throughout the Union Territory of Delhi and until a Commandant is appointed under sub-section (2), the Commandant General may also exercise the powers and perform the functions assigned to the Commandant by or under this Act.

3. Appointment of Members -

(1) Subject to the approval of the Commandant General, the Commandant may appoint as members of the Home Guards such number of persons, who are fit and willing to serve, as may from time to time be determined by the Chief Commissioner of Delhi, and may appoint any such member to any office of command in the Home Guards.

(2) Notwithstanding anything contained in sub-section (1) the Commandant General may, subject to the approval of Chief Commissioner of Delhi, appoint any such member to any post under his immediate control.

4. Functions and duties of members -

(1) The Commandant may at any time call out a member of the Home Guards for training or to discharge any of the functions or duties assigned to the Home Guards in accordance with the provisions of this Act and rules made thereunder.

(2) The Commandant General may in any emergency call out a member of the Home Guards for training or to discharge any of the said functions or duties in any part of the Union Territory of Delhi.

5. Powers, protection and control -

(1) A member of the Home Guards when called out u/s 4 shall have the same powers and protection as an officer of police appointed under any Act for the time being in force.

(2) No prosecution shall be instituted against a member of the Home Guards in respect of any thing done or purporting to be done by him in discharge of his functions or duties as such member except with the previous sanction of the District Magistrate.

6. Control by officers of police force -

The members of the Home Guards when called out u/s 4 in aid of the police force shall be under the control of the officers of the police force in such manner and to such extent as may be prescribed by rules made u/s 8.

9. Members of Home Guards to be public servants -

Members of the Home Guards acting under this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

(Emphasis Supplied)

2. In the year 1959, the Chief Commissioner of Delhi framed Delhi Home Guard Rules, 1959. It would be relevant to note following provisions of the Delhi Home Guard Rules, 1959:-

3. Appointment of member of Home Guards - No person shall be appointed as a member of the Home Guards unless-

(a) he has attained the age of 20 years.

(b) he has not completed the age of 60 years.

(c) he has passed at least the fourth primary examination, and

(d) he has been medically examined in accordance with the directions of the Commandant General and is in the opinion of the Commandant physically fit.

Provided that the Commandant General or the Commandant may relax the conditions regarding the age or educational qualification, prescribed in clause (a), (b) and (c) above in suitable cases.

4. Application for appointment - A person desiring to be appointed as member of the Home Guards shall make an application in form "A".

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8. Term of Office - The term of office of a member of the Home Guards shall be three years.

Provided that the appointment of any such member may, at any time be terminated by the Commandant General or the Commandant, as the case may be, before the expiry of the term of office -

(a) by giving one month's notice, or

(b) without such notice, if such member is found to be medically unfit to continue as a member of Home Guards.

9. Limit of age for a member of the Home Guards - A member of the Home Guards may continue to be such member until he attains the age of sixty year.

Provided that the Commandant General or Commandant may relax the age in suitable cases.

(Emphasis Supplied)

3. In the year 1995, the government of National Capital Territory of Delhi terminated the services of 77 persons who were serving in the Delhi Home Guards Organization between the years 1978 and 1995. Aggrieved by the termination of their services, said 77 persons approached the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the "Tribunal") by filing various applications u/s 19 of the Administrative Tribunals Act, 1985, which applications were dismissed vide order dated March 21, 1997. Aggrieved by the dismissals of their applications by the Tribunal, said 77 persons approached this Court by filing a petition under Article 226 of the Constitution of India, being No. 4286/1997 titled as "Mansukh Lal Rawat & Ors v Union of India & Ors", which petition was dismissed vide order dated May 26, 1999.

4. The grievance raised by the petitioners in the aforesaid petition (Civil Writ Petition No. 4286/1997) was summarized by the Division Bench in the following terms:-

The case made out by the Petitioners is that they were (and in some cases, they are) working as members of the Home Guards. It is stated that they were appointed on various dates from 1978 onwards and all of a sudden, they have been told that their services are no longer required. No reasons have been given for terminating their services nor has any written order been given to this effect.

5. The Division Bench noted in great detail the history, nature and character of the Delhi Home Guards organization in the following terms:-

At the outset, it is first necessary to understand who, or what are "Home Guards". The Government of India, Ministry of Home Affairs has printed a booklet called "Home Guards - Compendium of Instructions, 1993". A perusal of Para 1.1 thereof shows that the Home Guards is a voluntary citizens organization raised for local defense in the United Kingdom during World War-II. The Home Guards was raised in India in December, 1946 in Bombay to assist the police in controlling civil disturbances and communal riots. This concept of a voluntary citizens force which was to be auxiliary to the police force was extended to purposes as diverse as maintenance of law and order, for meeting emergencies like floods, fires, famines, etc. It appears that the Home Guards is spread all over India and it continues to maintain its voluntary concept and character. The role of the Home Guards is now revised and the services of a member of the Home Guards can now be utilised in a variety of other ways.

Any person meeting the eligibility requirements can be a member of the Home Guards. Central Government Servants are permitted to join the Home Guards organization (para 1.15 on page 9 of the booklet) and the period spent by them on training/duty would be treated as special casual leave. If an unemployed person undergoes training and volunteers his services to the Home Guards for three years, he is given weightage for employment in Government service in

Group "C" and "D" posts (para 1.23 on page 14 of the booklet). A member of the Home Guards offers to receive training during peace time and places his services "at the disposal of the nation during the country's hour of need in peace or war time. A nucleus of paid staff for command and control is, however, authorised at various levels (para 2.1 on page 16 of the booklet).

Bombay Home Guards Act, 1947 (hereinafter referred as the Act) was extended to Delhi and some of its salient features affirms the above position, namely, that the Home Guards is a voluntary organization or a voluntary body of persons who are fit and willing to serve (Section 3) for the protection of persons and security of property and the public safety (Section 2). A member of the Home Guards is given training and is required to discharge any of the functions and duties assigned to him (Section 4) and is liable for punishment for neglecting or refusing to obey orders or discharging his functions and duties as a member of the Home Guards (Section 6-B and Section 7).

The Delhi Home Guards Rules, 1959 (hereinafter referred to as the Rules) were notified through a notification dated 20th July, 1959 and a perusal thereof shows that a person may be appointed as a member of the Home Guards only if he has attained the age of twenty years but has not completed the age of sixty years and has passed at least the fourth primary examination and is otherwise physically fit (Rule 3). The term of office of a member of the Home Guards is three years but this period may be curtailed by giving one month's notice or if the member is found to be medically unfit (Rule 8).

The said Compendium of Instructions mentions in Para 1.10 (page 7 of the booklet) that after completion of his tenure, a member of the Home Guards is eligible for re-enrolment but since some States retain these members over a long period, there has been an erosion in the voluntary character of the organization and it is suggested that unemployed persons should not be retained as Home Guards over a long period so as to preserve the voluntary character of the organization.

In Para 7.1 (e) (page 51 of the booklet) it is stated as follows:

When Home Guards are called-up for duty and have to be paid, the cost will be borne by the agency at whose instance the Home Guards are called up. The expenditure is not shareable by the Centre unless they are called up at the instance of the Centre.

In other words, it is not the Home Guards organisation" which pays a member of the Home Guards but the user agency which pays the emoluments/honoraria that is given to each member of the Home Guards. Consequently, when a member of the Home Guards perform duties as a Traffic Policeman (for example) on behalf of the Delhi Police (a very normal occurrence which can be observed by almost everybody in Delhi) it is the Delhi Police which has to bear the financial burden of using his services.

The upshot of the above discussion is that it is quite clear that the Home Guards is a volunteer organization and the intention is that its members should serve a tenure of three years, which may be curtailed or extended. In practise, however, it appears that a member of the Home Guards continues as such for a considerable period of time and while this is discouraged, it appears (at least from the contents of the writ petition) that this practise is followed more in the breach than in its observance. A member of the Home Guards, even though he is a volunteer, is paid some emoluments/honoraria by the user agency for the services rendered by him for the benefit of to the user agency.

(Emphasis Supplied)

6. After noting the factual aspects of the case, the Division Bench summarized the controversy arising in the said case in following terms:-

The two questions that have been raised by the Petitioners before us are whether they are entitled to be regularised as members of the Home Guards, and whether their services can be terminated without following the procedure laid down by Rule 8 of the Rules.

7. With respect to question (i), the Division Bench held as under: -

In so far as the first question is concerned, the genesis, history and concept of the Home Guards clearly shows that it is not an "employment" or a "source of employment". It is a volunteer body where citizens voluntarily offer their services for the benefit of society. There are no hard and fast rules for recruitment or the nature of duties and functions that are to be performed by a member of the Home Guards. It is also not as if a member of the Home Guards cannot have employment elsewhere. A member of the Home Guards can be a professional or a government servant or a person carrying on any trade or occupation, industrial worker, university student, etc.; it can be anyone who can give some spare time for the benefit of the community. In fact, of the applicants who were before the Tribunal, admittedly some of them were employed in the government and some in the private sector. This being the position, there cannot be any question of regularising any person as a volunteer or for carrying on any voluntary activity. A contrary view will destroy the very ethos and character of the Home Guards.

The question of regularisation of a member of the Home Guards had come up before the Supreme Court in SLP (Civil) o. 12465/1990, decided on 30th July, 1991 in the case of Rameshwar Dass Sharma & Others versus State of Punjab & Others. In that case, the Supreme Court considered the question whether demobilised army personnel can be regularised in the Home Guards. On the basis of the counter affidavit that was filed in that case, the Supreme Court came to the conclusion that the Petitioners therein are not entitled to any relief of regularisation. Learned counsel for the Petitioners contended that the case before the Supreme Court was totally different from the present case inasmuch as the Supreme Court was considering the case of regularisation of demobilised army personnel while the Petitioners before this Court are unemployed civilians. We do

not think that such a distinction is real or material. The fact remains that the issue which was before the Supreme Court was about regularisation of a member of the Home Guards and the Supreme Court was of the view that a member of the Home Guards is not entitled to regularisation.

In this view of the matter, we have no doubt in our minds that the Petitioners are not entitled to be regularised as members of the Home Guards. In fact, such a concept does not exist except in the case of personnel involved in training, command or control.

8. With respect to question (ii), the Division Bench held as under:-

The second question raised by the Petitioners is with regard to their abrupt termination. According to the Petitioners, their services can be terminated only in accordance with the provisions of Rule 8 of the Rules, that is, by giving them one month's notice or they can be discharged in the event of their being found medically unfit. In the present case, there is no allegation that any of the Petitioners is medically unfit. The question is whether they are entitled to one month's notice before their services are terminated.

Rule 8 of the Rules reads as follows:

.....

We find from a perusal of the record that what Respondents No. 2 and 3 are seeking to do is to terminate the membership of the Petitioners on their completing the present tenure of three years. In other words, Respondents No. 2 and 3 are not inclined to re-enroll the Petitioners after they have completed their existing tenure of three years (even though it may be the fifth or sixth such tenure). It is not as if the said Respondents are curtailing the tenure of three years. If the said Respondents were curtailing the tenure of the Petitioners then, of course, it would have to be done in accordance with Rule 8 of the Rules, but that is not the position in the case before us. The so-called termination in the case before us is one by efflux of time. There is no reason why Rule 8 should (or can) be invoked when the "termination" of the services of the Petitioners is as a result of the efflux of time. Therefore, on this question also, we are of the view that the Petitioners have not made out any case in their support.

9. Before concluding, the Division Bench observed as under:-

What does, however, disturb us a little bit is the fact that 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 saving grace, however, is 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 the Government. Moreover, Para 1.23 on page 15 of the booklet says that Respondent No. 1 has requested State Governments "to provide assistance to unemployed Home Guards in seeking gainful employment on the completion of their term of employment". We hope the Respondents are aware of both these responsibilities. We have also been informed by learned counsel for Respondents No. 2 and 3 that in view of the directions given by the Tribunal, some policy is being framed to ensure that there is no pick and choose with regard to the persons who have to be enrolled or re-enrolled and those whose tenures are not to be extended. Given the fact 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, we do expect the Respondents to be alive to this situation and to frame a transparent and workable policy in this regard. We hope that the Respondents will frame the policy within a period of six months.

(Emphasis Supplied)

10. Pursuant thereto, on April 18, 2000 the Government of National Capital Territory of Delhi framed a policy for enrollment/re-enrollment and discharge of members of Home Guards in Delhi. It would be relevant to note following salient features of the policy dated April 18, 2000:-

POLICY GUIDELINES FOR ENROLLMENT/RE-ENROLLMENT AND DISCHARGE OF MEMBERS OF HOME GUARDS IN DELHI

In pursuance of observations of the Hon"ble High Court in case suit No. CWP 4286/87, Mansukh Lal Rawal & Ors. vs. Union of India Ors. and after detailed discussions held with the officers of the Directorate of Home Guards on 10.12.99 & 22.12.99 under the Chairmanship of Principal Secretary (Home), the following policy guidelines on the subject referred to above are laid down for implementation with immediate effect:-

.....

APPOINTMENT OF DISCHARGED HOME GUARD VOLUNTEERS (RE-ENROLMENT)

1. Even though re-enrolment of discharged members of the Home Guards is not prohibited under the provision of the Act and the Delhi Home Guard Rules 1959 (in short the Rules) but it is observed that the official instructions on Home Guards issued, from time to time suggest that as far as possible, they are not to be deployed on permanent basis for an indefinite period so that the voluntary character of the organization is carefully preserved and the Home Guards regularly discharged after three years of fixed term, keep on adding to the manpower pool in the society to be recalled for deployment in the event of any emergency.

2. However, as the Directorate of Home Guards Delhi, out of a strength of 9879 volunteers as on 1.12.99, has on its rolls more than 4,000 volunteers who have served the organization for more than 3 years and up to a period of 15 years and

more, without strictly adhering to the 3 years term laid down in the rules and keeping in view the observations of the Hon"ble High Court in the aforesaid case to frame a workable and transparent policy and to be alive to the situation, it has been decided to give one last opportunity to the discharged Home Guard Volunteers for seeking appointment as Home Guard Volunteer for another term of three years subject to the following conditions.

(i) Those Home Guard Volunteers who have been discharged on completion of 3 years tenure and have not since been on the rolls of the Directorate of Home Guards for more than six months (i.e. six months gap from the date of discharge) may be considered for appointment for one more term of 3 years provided that they have rendered excellent service with regard to discipline, general conduct and discharge of duties as Home Guard Volunteers.

(ii) In future after completion of the term of 3 years as indicated in para (i) above, such re-enrolled Home Guard Volunteers will be automatically struck off the rolls of the Directorate of Home Guards and will have no claim whatsoever for future appointment as members of Home Guards.

(iii) Those Home Guard Volunteers who have been discharged on disciplinary grounds i.e. misbehavior insubordination malpractices etc, and found medically unfit u/s 6-B of the Bombay Home Guards Act and Rule 10 and Rule 8 of the Delhi Home Guard Rules, will under no circumstances be eligible for fresh appointment/re-enrollment as a Home Guard Volunteer.

(iv) All those Home Guard Volunteers who have completed the training programme prescribed by the Directorate of Home Guards and have successfully passed the test at the end of the training.

This issues with the approval of the Lt. Governor, Delhi

11. Thereafter in the year 2001, 85 persons who were serving as members of the Delhi Home Guards organization between the years 1978 to 1993 and discharged from the Home Guards in the year 1999/2000 filed the present petition inter-alia contending therein that:- (i) the employment of the petitioners with the Delhi Home Guards organization is of permanent nature inasmuch as the petitioners had served the Home Guards for about 15-20 years prior to their discharge and they have rendered more than 240 days of service in every year of their employment with the Home Guards; (ii) the members of the Delhi Home Guards organization including the petitioners are holders of civil posts for the reasons the salary of the Home Guards are paid out of the funds of the Central Government and the duties performed by the Home Guards are in public interest and for the welfare of the public in general; (iii) in addition to being holders of civil posts, the members of the Delhi Home Guards organization are also deemed to be the public servants in view of the provisions of Section 9 of the Bombay Home Guards Act, 1947; (iv) in view of above 3 reasons and the dictum of law laid down in various judicial pronouncements the respondents ought to regularize the services of the petitioners; and (v) the policy dated April 18, 2000 framed by

the respondents does not conform to the observations made by a Division Bench of this Court in its judgment dated May 26, 1999 passed Civil Writ Petition No. 4286/1997.

12. On the issue of the policy dated April 18, 2000 framed by the respondents not being in conformity with the judgment dated May 26, 1999 passed by a Division Bench of this Court in Civil Writ Petition No. 4286/1997, following averments have been made by the petitioners in the present petition:-

14. That though on the one hand Respondent No. 1 herein represented that this policy is being framed that there is no pick and choose with regard to the persons who have to be enrolled or re-enrolled and those whose tenures are not to be extended yet respondents have throughout the policy of pick and chose and of favoritism and to enroll and re-enroll incumbents at their fancy indiscriminately and on the basis of receipt of consideration in cash and kind. The glaring example of petitioners herein is worth noticing, who were discontinued immediately after decision of their writ petition despite their tenure of three years did not expire. But they were discontinued and their immediate officer (DSO) informed them verbally that they would be given duty in future only by this Hon''ble Court. Apart from the case of the petitioners there are several hundred cases of enrolment and re-enrolment which prove beyond shadow of doubt that respondents only intend to continue with their own policy of pick and chose policy of favoritism and making enrolment and re-enrolment and receipt of cash considerations. The Petitioners are annexing herewith list of some of Home Guards recently enrolled and/or re-enrolled ignoring all norms, contrary to principal of First come Last go and against the decision of this Hon''ble Court and in violation of their own representation before this Hon''ble Court.

15.

16. The respondents herein have deliberately and intentionally not acted and followed the judgment dt. 26.5.1999 of this Hon''ble Court rather they have acted contrary to and in violation of the decision of this Hon''ble Court. They have done nothing and have rather no intentions for framing scheme/policy as envisaged in decision of this Hon''ble Court, the petitioners herein and several hundred others who have rendered more than 15/20 years of service are suffering and unable to find any employment elsewhere with the result they are starving and are on verge of extinction. On the other hand respondents on receipt of consideration in cash and as a result of policy of favoritism and that of pick and chose have enrolled and re-enrolled Home Guards who were discontinued after the discontinuance of petitioners herein followed by several hundred others.

17.

18. That instead of framing transparent and consistent policy/scheme the respondents quite arbitrarily and illegally issued notice inviting applications for being enrolled as members of Home Guards Organization without first

accommodating incumbents covered under the decision dated 26.5.99 &/or even following their alleged policy/scheme embodied in memorandum dt. 18.4.2000. Not even a single incumbent who approached this Hon''ble Court has been enrolled or provided with employment/re-enrolment and instead fresh, inexperienced and persons known to the respondents have been engaged during this period, a list of some of such favourites of the respondents without following policy/scheme is annexed hereto as annexure.

19.

20. Petitioners have been singled out. The respondents have violated and acted against the letter and spirit of the decision of this Hon''ble Court. The Petitioners have represented and approached personally for their re-enrollment like their colleagues who were discharged after the date of discharge of the petitioners. The petitioners have also made representation for their enrollment even as per their Memo dt. 18.4.2000 &/or till such time policy is framed they be engaged/re-enrolled but in vain. The respondents ill intentions inasmuch as they have recruited fresh incumbents ignoring the petitioners & their own alleged so called policy/memo dt. 18.4.2000. Thus Respondents office bearer have openly asserting that no scheme as envisaged in the decision of this Hon''ble Court would be framed as it would result in financial loss to them because for each enrollment/re-enrollment cash consideration of Rs. 8,000-10,000/- is fixed and only those incumbents who pay such huge amounts are being engaged &/or re-enrolled. In these premises the petitioners very believe that respondents are not in framing transparent & workable policy in favor of the petitioner and he like Hon''ble Apex guidelines laid down in this respect by Court this Hon''ble Court.

13. We note that following relief(s) have been claimed by the petitioners in the present petition:-

a) Issue an appropriate writ, order or direction directing respondents therein to frame transparent workable and consistent scheme in the matter of employment, absorption and regularization of members of Home Guard.

b) Issue an appropriate writ, order or direction directing respondents herein direct respondents their office agents etc., to continue to employ the members of Home Guards on 3 years basis up to the age of 60 years or until their absorption and regularization on permanent basis.

c) Issue an appropriate writ order or direction and more particularly writ in the nature of certiorari quashing and setting aside impugned memorandum No. F.1/198/98/Home (G) 122674-74 dt. 18.4.2000 Annexed-B hereto.

d) Issue an appropriate writ order direction and more particularly a writ in the nature of Mandamus directing respondents to frame scheme of regulation of the petitioners and to absorb them in the department/organization with which the petitioners have been working namely Delhi Police, Railways, DESU, etc.

14. We note that during pendency of the present petition, 2 pronouncements

have been rendered by a Division Bench of this Court, which pronouncements have a material bearing on the controversy involved in the present case.

15. The first decision is reported as Chander Bhushan Rai and Others, Dev Kumar and Another and Jitender Prasad Singh and Others Vs. Govt. of NCT of Delhi and Another, . In said case, the questions which had arisen for consideration in the present case was that whether the home guards appointed under the Bombay Home Guards Act, 1947 are holders of civil posts and whether their services can be directed to be regularized. After referring to the provisions of Bombay Home Guards Act, 1947 as extended to the Union Territory of Delhi and Delhi Home Guards Rules, 1959 as also the judgment of this Court in Mansukh Lal's case (supra), it was held by the Court that the Home Guards appointed under Bombay Home Guards Act, 1947 are not holders of civil posts and their services cannot be directed to be regularized.

16. The second decision is dated April 29, 2002 passed in Civil Writ Petition No. 2001 of 2001 titled as "Ajay Kumar & Ors v. Govt. of NCT of Delhi". It would be relevant to note following portion of the said decision:-

The status of the home guards appointed in terms of the Bombay Home Guard Act, 1947 (in short, "the said Act") as extended to Delhi is the question involved in these three writ petitions.

2.

3. The contention of the petitioners is that the State under the garb of the statutory scheme under the said Act read with Delhi Home Guard Rules, 1954 (hereinafter referred to as "the Rules") had been abusing their statutory power in terms whereof the Home Guards work force engaged in its various Departments such as Police, Railways etc.

4. The modus operandi of the respondents, according to the petitioners, is that their services are utilized as regular employees performing duties of regular nature continuously for years together and thus although they have become public/civil servants for all intents and purports, their services are terminated on mere whims and fancies of the State. Despite the fact that the petitioners had been appointed in terms of the provisions of the said Act, according to the learned counsel, there exists a relationship of master and servant between the State and the petitioners.

5. It has been contended that the Home Guards are paid out of the Central Government Fund. They performed their duties under the control and supervision of the Officers of the Government. The duties assigned to them are public in nature and the same are performed as the regular employees of the State. They are also working for the whole time and their services are not requisitioned only in emergency.

6. In that view of the matter, the petitioner would contend that it cannot be said to be a voluntary work by any stretch of imagination.

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14. With a view to consider the rival contentions of the parties, at the outset we may consider the relevant provisions of the Act.

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20. The said Act postulates that the Home Guards would be a voluntary organization and the services of the members thereof can be requisitioned as and when required by the Commandant in the interests of the country. The said Act and the Rules further postulate that the members of the Force would be volunteers.

21. The petitioners having not questioned the vires of Section 2 of the said Act and the relevant Rules before the Tribunal cannot be permitted to raise the said contentions for the first time before this Court.

22. In *Man Sukh Lal Rawal v. Union of India* Civil Writ Petition No. 4286 of 1997 decided on 26.05.1999 a Division Bench of this Court having regard to the provisions of the said Act, inter alia, held:-

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26. The observations made by the Division Bench do not constitute the ratio of the decision. The fact remains that in a similar situation, a Division Bench of this Court has held that termination of service of the Home Guards in terms of

Rule 8 of the Rules would be valid and they cannot be directed to be regularized.

27.

28. It is not in dispute that having regard to the provisions of the said Act and the Rules framed thereunder and keeping in view the several decisions of this Court as also the Supreme Court of India, the organization of the Home Guards is a voluntary organization.

29. If authorities for their own benefit had been mis-utilizing the same, action can be taken against them, but thereby no legal right can be said to have been acquired by the petitioners to which they are not entitled to thereunder.

30. If the submission of Mr. Sabharwal having regard to the fact that the petitioners had been continuously working with various Departments including Police, Railways, etc. between 12 to 13 years and thus in truth and substance, they are not part of the volunteer work force is accepted, such appointments must be held to be contrary to the purpose and object which the provisions of the Act seeks to achieve.

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41. The question raised in this writ petition is squarely covered by a Division Bench decision of this Court in *Chander Bhushan Rai & Sons/Dev Kumar & Anr/*

Jitender Prasad Singh & Ors v. Govt. of NCT of Delhi & Anr in CWP Nos. 3600, 3601 & 3602 of 2001 on 21st February, 2002.

42. The respondent indisputably being a State in the matter of recruitment is bound to comply with the constitutional requirements as adumbrated under the Articles 14 and 16 of the Constitution.

43. It is now well settled principle of law that when an employer frames any recruitment rules, it is bound to comply therewith. The officers of a State cannot make any appointment in violation of such recruitment rules. Any appointment made in violation of the recruitment rules as also Articles 14 and 16 of the Constitution of India, nobody has any right of appointment, all persons who were eligible therefor, had a right to be considered. Even no document has been produced by the petitioner to show that such appointments have been made in terms of the recruitment rules or prior thereto any advertisement has been issued. There is nothing on record to show on what basis the writ petitioners filed their applications for recruitment. No reason has also been assigned as to why the recruitment rules could not be complied with.

44. It is well known that he who comes by backdoor must go by that door. (See State of UP & Ors v. UP State Law Officers Association & Ors.)

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48. In any event, as the petitioners themselves took a chance by taking part in the recruitment process and having not succeeded therein, now cannot be permitted to turn round and contend that they had regularly been appointed. From the fact that they had never made any complaint until the retirement of the above-mentioned two officers, is itself a pointer to show that they were aware that their appointments were illegal. Had they contended that their appointments have been made on a regular basis, they would not have applied for appointment on regular posts and compete with the other candidates. It is evident from the statements from the counter-affidavit that some of the writ petitioners did not apply therefor, as they did not have the requisite qualifications.

49.

50. In view of the aforementioned binding precedents of this Court, 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 u/s 19 of the Administrative Tribunals Act.

51. However, the petitioners have pointed the malpractices taken recourse to by a section of the officers to the provisions of the said Act, the Union of India through the Department of Personnel & Training must see to it that the provisions of the said Act are not misused.

52. Home Guards are not meant to be appointed in ordinary course. The Government is supposed to make appointments in terms of the said Act, as a

result whereof a relationship of master and servant is not to come into being, as thereby a constitution of disciplined volunteer force is contemplated.

53. Any deviation from the said legislative policy would be ultra vires.

17. During the hearing of the present petition, the learned counsel appearing for the petitioners reiterated the contentions advanced in the petition. In addition thereto, the learned counsel strongly relied upon the decisions of the Supreme Court reported as *State of West Bengal and Others Vs. Pantha Chatterjee and Others*, and *Union of India (UOI) and Others Vs. Parul Debnath and Others*, to contend that the Home Guards is not a voluntary organization and the respondents ought to frame an appropriate/reasonable scheme for regularization of the services of the members of the Home Guards including the petitioners.

Issue I: Whether the respondents can be directed to frame a scheme for regularization of the services of the members of the Home Guards organization including the petitioners

18. We need not labour much on this issue for the reason it has been conclusively decided by this Court on 3 occasions (*Mansukh Lal Rawat*, *Chander Bhushan Rai* and *Ajay Kumar's* cases (*supra*)) that since the Delhi Home Guards organization is a voluntary organization the services of its cannot be regularized, notwithstanding the fact that large numbers of discharged members had served the organization much beyond the tenure of 3 years prescribed in Rule 8 of the Delhi Home Guard Rules, 1959.

19. In said regards, it would also be useful to note the following observations made by the Constitution Bench of the Supreme Court in the decision reported as *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, :-

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not

open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme.

20. In view of the above, we have no hesitation in holding that the respondents cannot be directed to frame a scheme for regularization of the members of the Home Guards organization.

21. As regards the decisions relied upon by the petitioners, the facts in Pantha Chatterjee's case (supra) were that the part time Border Wing Home Guards filed a writ petition before the Calcutta High Court contending that they were being discriminated vis-a-vis regular/permanent Border Wing Home Guards of the West Bengal and the personnel of Border Security Force despite the fact that they have been performing similar duties and discharging similar responsibilities. A learned Single Judge allowed the petition and held that part time members of the Border Wing Home Guards would be treated at par with whole time staff of the Border Wing Home Guards and they would get all privileges as available to a full time Border Security Wing Home Guards, which decision was affirmed by the Division Bench. Aggrieved by the aforesaid, the Union of India filed an appeal before the Supreme Court. Before the Supreme Court, it was contended by the Union of India that the Home Guards is a voluntary organization; the part time Border Wing Home Guards are entitled to the honorarium; they are to be paid only as and when their services are required and utilized and their appointment was not to exceed for a period of more than 3 months except in cases where it was recommended otherwise by the authorities of the Border Security Force. After noting that the duties performed by the part time Border Wing Home Guards were similar to the duties performed by the regular Border Wing Security Home Guards of West Bengal it was held by the Supreme Court the High Court rightly concluded that part time Border Wing Home Guards cannot be treated differently from the permanent staff of Border Wing Home Guards.

22. In view of the factual backdrop noted above, the decision of the Supreme Court in Pantha Chatterjee's case (supra) would have no application on the aspect of regularization of the services of the members of the Delhi Home Guards organization.

23. The facts in Parul Debnath's case (surpa) are that the respondents were appointed on different dates as members of the Andaman and Nicobar Islands Home Guard Organization. Aggrieved by the differential treatment meted out to them in comparison to their counterparts in the regular administration, the respondents filed applications before the Central Administrative Tribunal, Calcutta Bench, Circuit Bench at Port Blair for issuance of directions to the government to prepare an appropriate/reasonable scheme for regularization of the services of

the Home Guards, who had been working for several years and to give them equal pay for equal work in relation to their counterparts in the regular organization and in particular to those Home Guards who were performing duties which were similar to the duties of the regular employees of the Andaman and Nicobar Administration. In view of the directions passed by the Tribunal, the government framed a scheme which provided for reservation of 20% of the vacant posts to accommodate the respondents in the Andaman and Nicobar administration while setting apart 80% vacancies for other candidates. The Supreme Court quashed the aforesaid Scheme on the ground that it does not conform to the guidelines laid down in *Pantha Chatterjee's case* (supra) and directed the government to absorb the respondents in Andaman and Nicobar administration in one go and not in a phased manner. It is significant to note that in *Parul Debnath's case* (supra), the Supreme Court has not considered the decision of the Constitution Bench in *Uma Devi's case* (supra).

24. We can safely say that the decision in *Parul Debnath's case* (supra) which turns on its peculiar facts would have no application on the aspect of regularization of services of casual/temporary employees, particularly when it has not considered the decision of the Constitution Bench in *Uma Devi's case* (supra).

Issue II: Whether the policy dated April 18, 2000 framed by the respondents conforms to the observations made by a Division Bench of this Court in its judgment dated May 26, 1999 passed in *Mansukh Lal Rawat case's* (supra)

25. As already noted hereinabove, in *Mansukh Lal Rawat's case* (supra) a Division Bench of this Court held since the Delhi Home Guards organization is a voluntary organization the services of its members cannot be regularized. While so holding, it was observed by the Court that the respondents should frame a transparent and workable policy for enrollment/re-enrollment of the members/discharged members of the Delhi Home Guards organization.

26. Pursuant thereto, on April 18, 2000 the respondents framed a policy for enrollment/re-enrollment of the members/discharged members of the Delhi Home Guards organization. As per said policy, the discharged members of the Delhi Home Guards organization were given 1 last opportunity to seek appointment in the said organization for another term of 3 years. The policy prescribed that the members of Delhi Home Guard organization who have been discharged on completion of 3 years tenure and have not since been on the rolls of the Directorate of Home Guards for more than six months (i.e. six months gap from the date of discharge) "may" be considered for appointment for one more term of 3 years provided that they have rendered excellent service with regard to discipline, general conduct and discharge of duties as Home Guard Volunteers.

27. We fail to see how the policy dated April 18, 2000 framed by the respondents does not conform to the observations made by a Division Bench of this Court in its judgment dated May 26, 1999.

28. As per the petitioners, the respondents should have first appointed discharged members of the Home Guards Organization including the petitioners as members of the organization before making new appointments in the organization. (See paragraph 13 above). A perusal of the judgment dated May 26, 1999 would show that no such direction was issued by this Court that the respondents should first appoint discharged members of the Home Guards organization before making new appointments in the organization.

29. In view of above discussion, the instant petition is dismissed. No costs.