

(2021) 06 SHI CK 0173
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 641 Of 2020

Rajender Singh

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 30-06-2021

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2021) 06 SHI CK 0173

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Vinod Chauhan, Anil Jaswal

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Petitioner was discharged from the respondent-Organization on 05.04.2010. His appeal against the discharge order was rejected by the competent

authority on 29.08.2011. Five years later on 11.11.2016, the petitioner approached the learned erstwhile Himachal Pradesh Administrative Tribunal (in

short "Tribunal") with the following substantive prayers:-

(i). The impugned action of the respondents in cancelling the memberships of the applicant order No.HOM(HC) Sirmour(A)/3-II-822-29 dated

5.4.2010 and then rejecting his appeal vide orders annexure A-2, may very kindly be quashed and set aside.

(ii) That the respondents may kindly be directed to call the applicant for attending refresher courses and also depute the applicant for duty.

(iii) That the respondents may kindly be directed to grant all benefit consequent upon renewal of the membership from the date same was cancelled,

i.e. seniority etc.â??

2. Petitioner was enrolled as a Home Guard Volunteer on 15.01.1997. On the grounds that he did not undergo any refresher course since 2001, which

is mandatory for Home Guards Volunteers at least once in two years as well as on the ground that he did not attend to his duties regularly, the

respondents issued a show cause notice to the petitioner on 16.02.2010. The petitioner did not respond to this show cause notice. The respondents

thereafter discharged him from the Organization on 5. 04.2010. The appeal filed by the petitioner against his discharge was also rejected by the

competent authority on 29. 08.2011. It is in this background that the petitioner filed an original application under Section 19 of the Administrative

Tribunals Act, 1985 before the Tribunal on 11. 11.2016, which on abolition of the Tribunal, has been transferred to this Court.

3. Heard learned counsel for the parties and gone through the record.

3(i). Learned counsel for the petitioner contended that the case of the petitioner was similarly situated to that of one Parmanand, who was also

discharged from the respondent-Organization, but has since been brought back on rolls by renewing his membership. Learned counsel argues that the

petitioner could not be discriminated vis-Ã -vis said Sh. Parmanand. This argument is countered by the learned Additional Advocate General by

submitting that case of Parmanand was different from that of the present petitioner. Parmanand was discharged from the Home Guards Organization

on 09.03.2011 for his failure to report for election duty. In his appeal, Parmanand submitted a cogent reason for not reporting on duty that being his

wife was also contesting the elections. The said reason was accepted by the Competent Authority and accordingly Parmanand was re-enrolled. The

documents in this regard have been placed on record.

Reasons for Parmanandâ??s discharge and his subsequent re-enrolment were different from that of petitionerâ??s discharge from the

Organization. Therefore, petitionerâ??s case cannot be considered on same footing as that of Parmanand.

3(ii). Learned counsel for the petitioner next relied upon a judgment rendered by a Division Bench of this Court in CWP No.3628 of 2020, titled Inder

Singh Versus State of H.P. and others, decided on 5.1.2021 and submitted that petitionerâ??s case is squarely covered by this judgment. Relevant

paras of the judgment read as under:-

â??The writ petitioner became enrolled, as, a volunteer in the Home Guards, on, 15.1.1997, and, thereafter, on 15.2.2001, he was put in the reserved

force. However, though he was, through an application hence made to the respondent concerned, and, subject to his declared fitness, in all respects,

hence entitled to re-claim his re-enrollment or re-enlistment, as a Volunteer in Home Guard. However, only in the year 2018, he motioned the learned

erstwhile Himachal Pradesh Administrative Tribunal, through, his instituting thereat OA bearing No. 374 of 2018, and, thereon, the erstwhile

Administrative Tribunal, directed that the afore original application, be treated, as a representation to the respondent concerned, and, also directed qua

a decision being made thereon, in accordance with relevant Rules. In pursuance thereof, as becomes unfolded, by Annexure R-1, the authority

concerned declined the request, of, the writ petitioner, for his becoming re-enrolled, as a volunteer, in, the, Home Guards, hence for the reason(s), (a)

inasmuch as, his claim being time barred, and, secondarily, upon, despite his becoming enjoined to move an apposite application, for the afore purpose,

before the authority concerned, his not endeavoring to move it.

2. Be that as it may, the effects of all the afore may, become undone, rather only for ensuring that since, the writ petitioner, is otherwise, not, declared,

in the reply, on affidavit, sworn by the respondent, to be unfit, for performing the apposite duties, nor, is declared therein, to, during the tenure, of, his

service as a volunteer in the Home Guards, qua his not performing his duties, with lack of efficiency, and, or his mis-conducting, himself, (i)

thereupon, besides when the perusal, of, Annexure P-2, discloses that the persons aspiring to be re-enlisted as volunteer(s) in the Home Guards, are

not, to cross the prescribed therein age bar of 50 years, (ii) thereupon, when it is stated at the bar by the learned counsel for the petitioner, that the

writ petitioner has not crossed the apposite age bar, hence, the respondents concerned, are, directed to, subject, to his also meteing compliance with

Rule 3, of Annexure P-2, inasmuch as, his being (a) not less than 18 years and not more than 50 years of age, (b) is of good moral character; (c) is

physically fit to undergo arduous out-door duties and has been medically examined and found to be of normal health; (d) is at least literate in Hindi; (e)

is not wholly engaged in any course of study in any educational institution and

has an employment or profession; (f) is not a member of the Territorial Army; (g) takes an oath of allegiance to the Constitution of India and to the Government of Himachal Pradesh as laid down in the form of pledge

appended to these rules, hence proceed to consider the request of the respondent, for, his re-enrollment, as a volunteer in the Home Guards.â??

The submission of learned counsel for the petitioner that the judgment covers petitionerâ??s case cannot be accepted as the factual position in that

case was different. In the above extracted judgment, the writ petitioner was enrolled as a Volunteer in the Home Guards and thereafter was put in the

reserved force. Additionally, the writ petitioner therein was neither declared unfit for performing the duties nor there was any allegation about his

misconduct as noticed in the above extracted judgment. Whereas in the present case, the petitioner was serving as a Home Guards Volunteer, who

stood discharged from the Organization on the grounds that he did not undergo mandatory refresher course ever since 2001 and that he did not

discharge his duties regularly. The judgment, therefore, is of no help to the petitioner.

3(iii). Learned counsel for the petitioner half-heartedly raised another argument regarding the petitioner suffering from ailments during the relevant

period in the year 2010. The respondents denied this and submitted that the petitioner did not respond to the show cause notice issued to him on

16.02.2010 and also never produced any medical document regarding his alleged illness. The medical documents (Annexure P-4) attached by the

petitioner alongwith instant petition all pertain to the period post discharge of the petitioner from the Organization. Therefore, no benefit can be drawn

by the petitioner from this fact. The discharge order was passed on 05.04.2010. Appeal of the petitioner was dismissed on 29.08.2011. Petitioner

accepted this order for more than five years and it was only on 11.11.2016 that he chose to assail the orders before the Tribunal. Such challenge was

not even within the limitation prescribed under the Administrative Tribunals Act.

For all the aforesaid reasons, I find no merit in the instant petition, which is accordingly dismissed alongwith pending miscellaneous application(s), if

any.