
(2005) 05 SHI CK 0033
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 780 of 1998

Veer Singh and Another	Vs	APPELLANT
State of H.P. and Others		RESPONDENT

Date of Decision : 11-05-2005

Acts Referred:

Constitution of India, 1950 — Article 309
Himachal Pradesh Home Guards Act, 1968 — Section 14, 14(1), 4, 5, 5(4)
Himachal Pradesh Home Guards Rules, 1971 — Rule 18, 3, 4, 5, 7

Citation : (2005) 3 ShimLC 314

Hon'ble Judges : L.S. Panta, J;K.C. Sood, J

Bench : Division Bench

Advocate : Ramakant Sharma, for the Appellant; M.S. Chandel, General and R.M. Bisht, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

K.C. Sood, J.—Under challenge, in this petition, is the judgment of the H.P. State Administrative Tribunal dated September 11, 1997. The Petitioners, it appears, were enrolled as Home Guards Volunteer(s) under the provisions of Himachal Pradesh Home Guards Act, 1968 ("Act" for short). After serving as Volunteers in the Home Gurds, for three years and extended period, they were placed in the reserved category from the date their respective tenure expired. Dis-satisfied, the Petitioners moved the State Administrative Tribunal, seeking directions that they be treated as permanent employees of the Home Guards Organization and are liable to be retired only on attaining the age of superannuation. They also claimed pensionary benefits after such retirement as available to a Government employee.

2. The Administrative Tribunal by its impugned judgment, relying upon its earlier judgment in Kuldip Kumar and Ors. v. State of H.P. and Ors. O.A. No. 1995 of 1996 decided on 12.8.1997, held that the Petitioners were volunteers in the Home Guards organization under the Act and cannot be treated as Government

servants.

3. The Petitioners in their application before the Tribunal claimed that they were appointed as Bandsmen in 11th Btn. of H.P. Home Guards Organization with their posting at Band Training Centre, Arki and thereafter, they have been performing their duties as such. One of the Petitioners, Veer Singh, participated in the Republic Day Parade in Delhi in the years 1989,1990 and 1992. They were also granted certificates commending their work.

4. Learned Tribunal in Kuldip Singh's case, after noticing various provisions of the Act and looking to the nature of the organization of Home Guards, took a view that Home Guards Organisation though created under the Statute is purely a voluntary organization. The volunteers are trained for three years for civil defence to assist the regular police in emergency and other connected matters and they cannot be treated as Government servants nor they can be regularized under the Act.

5. Heard Mr. Ramakant Sharma, learned Counsel for the Petitioners and Mr. M.S. Chandel, learned Advocate General assisted by Mr. R.M. Bisht, learned Deputy Advocate General for the Respondents.

6. The Act came into force on July 22, 1968. The preamble of the "Act" indicates that the Home Guards Organization is constituted for use in emergency and purposes connected with it. Section 4 of the Act provides for the constitution of Home Guards and appointment of Commandant General and Commandant. Section 5 deals with the appointment of members of the Home Guards which reads:

5. Appointment of members of Home Guards.-(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 Government, and may appoint any such member to any office of command in the Home Guards under him.

(2) Notwithstanding anything contained in Sub-section (1), the Commandant General may appoint any such member to any office of command under his immediate control.

(3) A member of the Home Guards shall, on appointment, make a declaration in form I and receive a certificate of appointment in form II under the seal and signatures of such officer as may be prescribed.

(4) Subject to any rules made in this behalf, a, member of the Home Guards shall be required to serve the Home Guards organization for a period of three years (including the period spent in training) which period may be extended by the Government to such further period as it may consider necessary, and the member of the Home Guards shall, thereafter, serve in the reserve force of the Home Guards constituted as hereinafter provided, for a period of three years and shall, while serving in such reserve force, be liable to be called out for duty at

any time.

(Emphasis given)

7. A reading of the above provision shows that the Commandant of a Battalion may appoint persons as members of the Home Guards who are (a) fit, (b) willing to serve from time to time. A member of Home Guards after his appointment is to make a declaration in form I and receive a certificate of appointment under the seal and signatures of such Officer as may be prescribed. Sub-section (4) above clearly lays down that a member of the Home Guards is to serve the Home Guards Organization for a period of three years (including the period spent in training). However, this period is extendable by the Government to such further period as it may consider necessary. After serving for the extended period, a member of the Home Guards is to serve in the reserve force of the Home Guards constituted u/s 7 of the Act, for another period of three years. While serving in the reserve force, a member may be called out for duty at any time. Section 7 of the Act provides that Government by notification shall constitute a reserve force of the Home Guards consisting of members of the Home Guards who, under Sub-section (4) of Section 5, are required to serve in the reserve force. Section 8 of the Act lays down that The Commandant General, The Commandant, the District Magistrate or any other Officer authorized by 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 the Act and the rules. Section 9 provides that when a member of the Home Guards is called out for duty u/s 8 of the Act, then he will have the same powers, privileges and protection as an officer of police appointed under any law for the time being in force. Section 14 of the Act empowers the Government to make rules including the rules regulating the organization, appointment, conditions of service, qualifications, functions, duties, discipline, arms, accoutrements and clothing of members of the Home Guards and the manner in which they may be called out for service or be required to undergo any training as also for giving effect to the provisions of the Act. Section 14 reads:

14. Power to make rules.-

(1) The Government may, by notification, make rules consistent with this Act,-

(a) regulating the powers exercisable by the Commandant General, the Commandant, the District Magistrate or other officers authorized by the Commandant u/s 8;

(b) providing for exercise of control by officers of the police force over members of the Home Guards when acting in aid of the police force;

(c) regulating the organization, appointment, conditions of service, qualifications, functions, duties, discipline, arms, accoutrements and clothing of members of the Home Guards and the manner in which they may be called out for service or be

required to undergo any training;

(d) regulating the exercise by members of the Home Guards of any of the powers exercisable u/s 9 of this Act; and

(e) generally for giving effect to the provisions of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session in which it is so laid or the sessions aforesaid, the Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

8. Himachal Pradesh Home Guards Rules, 1971 were framed by the Governor of Himachal Pradesh in exercise of the powers u/s 14(1) of the Act. Rule 3 provides for the eligibility for appointment of Home Guards organization. Rule 4 stipulates that application for enrolment as members of the Home Guards Organisation shall be in the Form annexed to the rules in Appendix "A" to the Commandant of the area of his/her residence with two certificates of good moral character from responsible persons. Rule 5 provides that every person appointed as members of the Home Guards shall be given a certificate of appointment in Form II of the Schedule. Such certificate ceases to have effect after a person ceases to be the member of the Home Guards. Rule 7 provides for calling out of the Home Guards for the purposes:

(a) for training;

(b) for duties connected with training, administration, security of arms, ammunition, ceremonial occasions etc., according to the scale and period as may be authorized by the Commandant General;

(c) for operational duty for the protection of life and property from natural calamities or antisocial elements, maintenance of essential services, suppression of disturbance, control and regulation of traffic and assemblies and prevention of commission of offences, general assistance to the military, civil authorities or the police in the interest of national security;

(d) any other duty authorized by the Commandant General in public interest.

9. Rule 18 mandates that a Home Guard shall be discharged on completion of the term of his service of three years in the reserve force provided that the Commandant General or the Commandant may discharge a Home Guard earlier in certain circumstances.

10. A Home Guard on ceasing to be a member of the Home Guards Organization is required to surrender to the appointing authority, the certificate of his

appointment issued to him at the time of his recruitment. A reading of the provisions of the Home Guards Act read with the rules, noticed above, makes it clear that members of the Home Guards Organisation serve the Organisation purely on voluntary basis for a limited period of three years though extendable by the Government. After the expiry of the period of appointment, such members are to be included in the reserve force of the Home Guards for another period of three years. During this period of three years, such reserves are liable to be called for duty from time to time for various purposes, noticed above. Members of this organization are not placed in the regular pay-scale. They are paid fixed amount. When called for duty, or training, they are paid Camp allowance, Out of Pocket Allowance and Travelling allowance. In this view of the matter, the members of the Home Guards cannot be termed as Government servants nor can they be regularized.

11. A Four Judges Bench of the Apex Court in *Rameshwar Dass Sharma v. State of Punjab and Ors.* Civil Appeal No. 12405/1990 decided on July 30, 1991 taking note of the counter-affidavit filed by the State of Punjab, the fact that Home Guards who are ordinary demobilized armed personnel are employed on the basis of temporary need from time to time and in case they are called back to duty, they are paid per day allowance and the employees under this system cannot ask for regularization.

12. Faced with this, Mr. Ramakant Sharma learned Counsel for the Petitioners half heartedly suggested that the Petitioners were recruited as Bandsmen in the Home Guards and Civil Defence Department under the Recruitment and Promotion Rules framed under Article 309 of the Constitution of India for the posts of Bandsmen-cum-Guardsmen in the Home Guards and Civil Defence Department of the Government of Himachal Pradesh.

13. It appears, 18 posts of Bandsmen/Guardsmen were created in the Department of Home Guards and Civil Defence of the Government of Himachal Pradesh in the pay-scale of rupees 400-10-450/15-525/15- 600/20-660. One of the essential qualifications for enrolment as Bandsmen was that he should be a member of Himachal Home Guards or ex-serviceman and knows to play band instruments. These rules came into force with effect from February 15, 1989, whereas, all the Petitioners were appointed prior to 1989 in different years and therefore, by no stretch, it can be said that they were recruited under the Recruitment and Promotion Rules for the post of Bandsmen in the Department of Home Guards and Civil Defence. There is no material on the record even to suggest remotely that the Petitioners were appointed in the regular establishment of the Bandsmen under the Department of Home Guards and Civil Defence of the Government of Himachal Pradesh.

14. We find no merit in this petition.

Dismissed.

No costs.