

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.641 of 2020

Decided on: 30th June, 2021

Rajender Singh

.....**Petitioner**

Versus

State of Himachal Pradesh and others

.....**Respondents**

Coram

Ms. Justice Jyotsna Rewal Dua

Whether approved for reporting?¹

For the Petitioner: Mr. Vinod Chauhan, Advocate.

For the Respondents: Mr. Anil Jaswal, Additional Advocate General.

(Through Video Conference)

Jyotsna Rewal Dua, Judge (Oral)

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.*

¹ Whether reporters of print and electronic media may be allowed to see the order?

- (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.”*

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 05.04.2010. 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-à-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 Parmanand's discharge and his subsequent re-enrolment were different from that of petitioner's discharge from the Organization. Therefore, petitioner'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 petitioner's case is squarely covered by this judgment. Relevant paras of the judgment read as under:-

"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."

The submission of learned counsel for the petitioner that the judgment covers petitioner'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.

Jyotsna Rewal Dua
Judge

June 30, 2021
Mukesh