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In the Central Administrative Tribunal, Principal Bench, New Delhi.

O.A. No. 2332/89.

Date of decision: 30.10.1990

Shri V.S. Tyagi.

..Applicant.

Versus

Union of India & ors.

..Respondents.

Shri Umesh Mishra, counsel for the applicant,
Shri P.S. Mahendru, counsel for the respondents.

CORAM:

Hon'ble Mr. T.S. Oberoi, Member (J),
Hon'ble Mr. I.K. Rasgotra, Member (A).

JUDGEMENT

(Judgement of the Bench delivered by
Hon'ble Mr. T.S. Oberoi, Member (J).

In this O.A., filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for cancellation of notice dated 26.9.1989 (Annexure-A to the O.A.), issued by respondent No.2, calling upon the applicant, to vacate Quarter No. 10/12, Sewa Nagar, New Delhi, under occupation of the applicant, which was allotted to him, while in service as a Pharmacist in Railway Hospital, Delhi, from where he was dismissed on 12.6.89.

2. The applicant's case, briefly, is that he was General Secretary of Northern Railway Labour Union (Regd. & Pro.), and in that capacity, was a protected

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employee, and no action against him, for vacating the said quarter, could be initiated by the respondents, without requisite notice, as per provisions of the Industrial Disputes Act, 1947. His further case is that having represented to the Regional Labour Commissioner (C), New Delhi, with regard to the alleged illegal action initiated against him, by the respondent no.2, and the matter having been taken up by the Asstt. Labour Commissioner (C), as evident from letter dated 17/19 April, 1989 (Annexure-D to the O.A.), no further action, to his detriment, could have been taken by respondent No.2 during the pendency of the conciliation proceedings, initiated vide Annexure-D. In other words, his dismissal, by respondent No.2, on 12.6.1989, after order dated 19.4.89 (Annexure-D) by the Asstt. Labour Commissioner(C) was illegal, and, therefore, not sustainable in law. He, thus, sought for, the cancellation of the notice (Annexure-A), issued by respondent No.2.

3. In the counter, filed on behalf of the respondents, the contentions put forth by the applicant, were rebutted. They had taken up the plea that with the dismissal of the applicant, from service, on 12.6.1989, he no more enjoys any protected status, as claimed by him, even if he was entitled to any such status, while in service. They have also asserted that with the dismissal from service, the petitioner is no more entitled to remain in occupation of the quarter in question, and hence, the present O.A. deserves to be dismissed.

4. In the rejoinder, filed by the applicant,

Ans.

the assertions made in the O.A. were reiterated, claiming both the protection as protected workman under the Industrial Disputes Act, and also that no change in the conditions of service including the dismissal could be brought about, during the conciliation proceedings, which were initiated on 17/19.4.89, as against his dismissal, which took place on 12.6.89, as no employer could change the conditions of service, during the pendency of such proceedings, as per Section 33-A of the Industrial Disputes Act, 1947.

5. During arguments, the learned counsel for the applicant broadly urged the points, as mentioned above, and cited M/s. New India Motors P. Ltd., New Delhi (1) Vs. K.T. Morris, respondents, in support of his plea. The learned counsel for the respondents, on the other hand, by referring to Section 10.1 of the Industrial Disputes Act, 1947, pleaded that the applicant had filed the present O.A. on 21.11.89, after his dismissal from service on 12.6.1989, and with that, his rights, if any, under the provisions of the Industrial Disputes Act, also come to an end. The learned counsel for the respondents also pleaded that proceedings referred to by the applicant, as evident from notice (Annexure-D to the O.A.), were at very initial stage, and nothing has been adduced on record, to show as to what further development, if any, had taken place with regard to the same. In other words, there is nothing on record to show that the matter was, if at all, further referred to the concerned Labour Court, and, therefore, by virtue of the provisions

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contained in Section 10(1) of the Industrial Disputes Act, 1947, no protection is available to the applicant, merely by virtue of the Annexure 'D' to the O.A.

6. We have given our careful consideration to the rival contentions, as briefly mentioned above. We have also carefully perused the citation referred to by the learned counsel for the applicant and also the relevant provisions of the Industrial Disputes Act, 1947, referred to by him. Every case has, primarily, to be judged from the facts and circumstances of its own and from that stand point, we are of the view that the citation, referred to by the learned counsel for the petitioner does not help the applicant's case, as in the said case, the matter was already pending before the Industrial Tribunal, before the impugned action against the applicant therein, was taken, whereas in the instant case, only a notice had been issued and that took, by the Asstt. Labour Commissioner (C), and there is nothing on record, adduced by the applicant to show, that the matter was eventually referred to the Labour Tribunal. The onus to prove this aspect of the case, was solely on the applicant. Further, the applicant has filed this O.A. on 21.11.89, much after the date of his dismissal, i.e. on 12.6.89, without first availing of the departmental remedy, as required under Section 20 of the Administrative Tribunals Act. Besides, Annexure 'A', cancellation of which has been prayed for, is only a 'notice', and not the final order, and for that reason also, the present O.A. is not maintainable.

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7. In result, we do not find any force or merit in the present application, and the same is accordingly dismissed. We, however, make no order as to costs.

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(I.K. Rasgotra),
Member (A) 190
20/10/1971

DOB 30.10.90
(T.S. Oberoi),
Member (J).