

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ORIGINAL APPLICATION NUMBER 644 OF 2004

ALLAHABAD, THIS THE 06TH DAY OF JULY 2004

HON'BLE MRS. MEERA CHHIBBER, MEMEBR(J)
HON'BLE MR. S.C. CHAUBE, MEMBER (A)

Prem Prakash Singh, aged about 27 years,
s/o Shri Siya Ram Singh
R/o Village Prasadpur, Post Cantt Line,
District-Ghazipur.

..... Applicant

(By Advocate: Shri R. Verma & Shri P. Srivastava)

V E R S U S

1. Union of India through its Secretary, Ministry of Finance,
(Department of Revenue), South Block,
New Delhi.
2. Manager, Government Opium & Alkaloid Works Undertaking
Ghazipur.
3. Shri Shyam Dhar, Manager,
Government Opium & Alkaloid Works Undertaking,
Ghazipur.

..... Respondents

(By Advocate : Shri S. Singh)

ORDER

By Hon'ble Mrs. Meera Chhibber, Member(J)

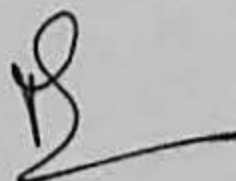
By this O.A., applicant has challenged the notice of termination dated 07.06.2004 (page 24) whereby applicant was informed that on expiry of notice of one month, his services shall stand terminated w.e.f. 07.07.2004.

2. The applicant has submitted that he was appointed as semi skilled worker (Electrification) vide order dated 13.02.2002 against the regular post, which is evident from the advertisement itself wherein the nature of work was shown to be as permanent (Pg.25 and 26 respectively). He has submitted that once the person is appointed on regular basis, he is to be governed by the statutory rules as he acquires status of a government servant and his services cannot be terminated without following the due process of law as stipulated under the statutory rules. He has also taken number of other grounds to challenge the above said notice.
3. The respondents, on the other hand filed, a short counter affidavit opposing the maintainability of the O.A., itself on the ground that against the impugned notice of termination, the applicant had filed an appeal before the General manager on 10.06.2004 (Annexure CA-I) and looking at the urgency involved in the matter, the General Manager has already passed the interim order dated 03.07.2004 whereby the notice of termination dated 07.06.2004 has been kept in abeyance till the disposal of the appeal. The order dated 03.07.2004 is annexed as Annexure CA-II to the Short C.A.
4. It is, thus, submitted by the respondents that since the applicant had already preferred an appeal before the appellate authority and he has already taken cognizance of the matter, the present O.A. is not maintainable. Therefore, the present O.A. may be dismissed with costs. The respondents have further submitted that since the decision in the appeal would take some time as it requires verification and scrutiny of the records and other relevant documents, therefore, the appellate authority has already protected the applicant till the appeal is



decided, therefore, the applicant cannot pursue two remedies simultaneously.

5. Counsel for the applicant opposed the objection raised by the respondents' counsel by submitting that under the statute, no appeal is provided against the termination, therefore, the appeal filed by the applicant is not at all relevant, nor the order passed by the appellate authority can come in his way for entertaining the present O.A. For this purpose, he has relied on Rule 23 of CCS (CCA) rules to show that against the termination order, no appeal lies under the Rules.
6. He next submitted that once this Tribunal had admitted the O.A., Section 19(4) of A.T. Act 1985 comes into play as such the authorities could not have passed any order on his appeal because if subject matter of such application pending before the authorities is same on which O.A. was admitted, the proceedings before the authorities abates. Once the O.A. is admitted in the Tribunal and if they wanted to pass any order, they could have done the same only after taking permission from the Tribunal. He submitted that the appeal filed by him is only a waste paper and is meaning-less. In this connection, he has relied on the Judgment of S.S. Rathore reported in 1990 SCC(L&S) Pg.50 para-20.
7. We have heard both the counsel and perused the pleadings available on record.
8. It is not denied by the applicant that he had filed an appeal before the General Manager as the same is placed on record as Annexure CA-I. It goes without saying that once he had filed an appeal to the higher



authority against the notice of termination dated 07.06.2004. He ought to have waited for a reasonable time before approaching this Tribunal. In any case what is relevant in the present set of facts is that the higher authority has already taken cognizance in the matter and is willing to look into the grievances of the applicant. After all, O.A. in the Tribunal has also been filed for redressal of his grievance and if we are satisfied that authorities themselves are not only looking into the matter, but in order to protect the right of the applicant, have even kept in abeyance, the notice of termination by way of interim order, naturally we should trust the authorities that they would apply their mind to the given facts of the case and after looking into the grievances raised by the applicant pass an appropriate reasoned order in accordance with law. Here it is not relevant whether the appeal is maintainable under the statute or not. The judgment relied upon by the applicant's counsel is totally mis-placed at this stage according to us because the Hon'ble Supreme Court was "dealing with the question of limitation and it was in the context of limitation that Hon'ble Supreme Court observed that final order would mean the order passed in the statutory appeal or representation. Here, we are not faced with the question of limitation at all. The point to be seen is, whether the applicant can pursue two remedies simultaneously that too when the authorities are themselves looking into the grievances of the applicant, the answer is definitely 'No'.

9. It is seen that applicant had filed his appeal only on 10.6.2004 against the notice of termination dated 7.6.2004. Before expiry of one month's period the General Manager has already passed an interim order on 3.7.2004 itself by keeping the notice of termination in abeyance till the appeal is decided and once the authorities have themselves protected



the right of the applicant, we are convinced that they would apply their mind to the facts and then pass a reasoned and speaking order and since the authorities have themselves looked into the grievances of the applicant, we are of the view that there is no need to keep this O. A. pending at this stage.

10. As far as section 19(4) of the A.T. Act is concerned, it for ready reference reads as under:

(4) Where an application has been admitted by a Tribunal under sub section (3), every proceedings under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.

11. Perusal of the order-sheet shows that the O.A. has not yet been admitted by the Tribunal as on 30.6.2004 counsel for the respondents had sought time to file Short C.A. Accordingly, the O.A. was directed to be listed on 6.7.2004 and the case was to be considered for admission/interim order on 6.7.2004, therefore, Section 19(4) of the A.T. Act, 1985 would not be attracted in the present case. As far as submission that the appeal filed by the applicant is a waste paper, we would only like to state that once the applicant had filed appeal to the authorities concerned, he cannot call it as a waste paper specially when appellate authority is looking into the matter.

12. In view of the above, we are of the opinion that the O.A. at this stage is pre-mature as the respondents have neither yet passed the final order on the appeal, nor the period of one month has yet elapsed and respondents have already protected the interest of the applicant by granting him interim relief, therefore, it will be open to the applicant to



agitate the matter if he is still aggrieved with the final order passed by the appellate authority. We would like to make it clear that this order has been passed by us without touching any point on the merit of the case and all the points shall be open to the applicant if the O.A. is still required to be filed. We would also like to clarify that since the notice of termination dated 7.6.2004 has been kept in abeyance by the appellate authority by its order dated 3.7.2004, it cannot be presumed by the authorities that the notice of termination would still elapse on 7.7.2004.

13. In view of the above, O.A. stands disposed of by giving liberty to the applicant to agitate the matter if he is still aggrieved with the final orders passed by the appellate authority. No order as to costs.


MEMBER(A)


MEMBER(J)

Shukla/-