

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 3210/2016

New Delhi this the 21st day of September, 2016

Hon'ble Mr. A. K. Patnaik, Member (J)

Hon'ble Mr. K. N. Shrivastava, Member (A)

Sh. Rohtash Singh Mann

Age about 42 years

S/o. Late Sh. Surajmal Mann

R/o. H. No. 3298, Sector-15,

Sonipat, Haryana.

....Applicant

(By Advocate: Mr. Shashank A. Singh)

Versus

1. The Principal,
Govt. Co-education,
Sr. Secondary School,
Holambi Kalan, Delhi-110 082.

2. The Director,
Directorate of Education,
Govt. of NCT of Delhi,
Caretaking Branch, Room No. 255,
Old Secretariat, Delhi-110 054.

....Respondents

O R D E R (ORAL)

A. K. Patnaik, Member (J) :

The whole gist and caboodle of the case, absolutely necessary for adjudication of the dispute, is that the applicant vide order dated 28.12.2015, was appointed as Estate Manager under the respondent No.1 on contractual basis for one year with a condition that he will continue as such till the post is filled up on regular basis. In pursuance of the said order of appointment, he joined the post on 08.02.2016. It has been alleged that the applicant continued to discharge his duties with due honesty and sincerity. Despite the above, the respondent, alleging certain omission and commission in respect of discharging the duties issued a memo dated 3.5.2016 to the applicant. The applicant filed the

reply to the said memo on 04.05.2016. But the respondents terminated the contractual appointment of the applicant vide order dated 06.05.2016. It has been stated that as against the said order of termination, he filed appeal on 06.05.2016 and 08.05.2016 but the respondent No.2 informed vide file No. F-DDE/Zone-X/NW-A/2016/477 dated 03.06.2016 that there is no need of interference on the order of termination of the applicant. Hence by filing the instant OA, the applicant has sought the following reliefs:

“8.1A This Hon’ble Tribunal be pleased to quash/set aside the impugned order No. 706 dated 06.05.2016 and reinstate the applicant with all service benefits as it would have been applicable on the day of the termination, in the interest of justice.

8.1B This Hon’ble Tribunal be pleased to pass any other order/direction as this Hon’ble Tribunal deems fit in the facts and circumstances of the case in favour of the applicant.”

2. Having heard, we have perused the records.
3. Admittedly, the appointment of the applicant vide order dated 08.02.2016 (A/2) was on contractual basis with fixed remuneration and with the specific conditions. *“8. The contractual engagement of estate Manager can be terminated **at any time** by the Head of the School **without any notice** in case of any absence without prior sanction of the HOS or lapse/irregularity committed by him/her work and conduct not found satisfactory”.* With open eyes, the applicant accepted such conditions and reported to duty under the respondent No.1. As the work of the applicant was not found satisfactory, the respondent, however, keeping in mind the principles of natural justice, issued notice to the applicant. He has submitted his stand point and after considering the reply of the applicant, the respondents issued the order of termination. It is seen that the order of termination of the contractual appointment of the applicant was issued

by the Vice Principal of the School, who has not been made as one of the Respondents in this case. It is the specific case of the applicant that he preferred appeal dated 06.05.2016 and 08.05.2016 which was rejected vide file No. F-DDE/Zone-X/NW-A/2016/477 dated 03.06.2016. Whereas, in this instant OA, the prayer of the applicant is to quash the order of termination from contractual engagement of the applicant dated 06.05.2016 only; although in the eyes of law the order of termination was merged with the order passed in appeal but the applicant did not pray to quash the order passed in appeal on 03.06.2016. Another important aspect of the matter which we would like to highlight is that Tribunal is duty bound to first consider whether application filed by the applicant is maintainable under the various provisions of the A.T. Act, 1985. In this connection Section 14 of the A.T. Act, 1985 being relevant is quoted hereunder:

“JURISDICTION, POWERS AND AUTHORITY OF TRIBUNALS

14. Jurisdiction, powers and authority of the Central Administrative Tribunal.-

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to-

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence service, being, in either case, a post filled by a civilian;

(b) all service matters concerning-

(i) a member of any All-India Service; or
(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or
(iii) a civilian [not being a member of an All-India Service or a person referred in clause (c)] appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controller by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

[Explanation - for the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations [or societies] owned or controller by Government, not being a local or other authority or corporation [or society] controller or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dated may be so specified under sub-section in respect of different classes of or different categories under any class of, local or other authorities or corporations [or societies].

*(3) Save as otherwise expressly provided in this Act, the Central Administrative tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court [***] in relation to-*

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (a) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs."

4. Admittedly, the applicant is neither a Civil Servant nor he seeks to be regularized as against a Civil Post of the Government and, as such, the very maintainability of this OA is in doubt. But in view of the aforementioned facts, we refrain from making any observation on the maintainability of this OA.

5. For the discussions made above, without expressing any opinion on the merit of this matter, this OA stands dismissed by leaving the parties to bear their own costs.

(K. N. Shrivastava)
Member (A)

(A. K. Patnaik)
Member (J)

/Mbt/