

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA),
Indiranagar,
Bangalore- 560 038.

Dated: 30-11-87

APPLICATION NO 829 /87 (T)

W.P.No. 705/85

APPLICANT

vs

RESPONDENTS

Shri Somashekara

The Director, NAL, Bangalore & another

To

1. Shri Somashekara
No. 206, Kodihalli
HAL Post
Bangalore - 560 017
2. Shri B.A. Raja Rao Scindia
Advocate
No. 617, Rajeswari Market
Avenue Road
Bangalore - 560 002
3. The Director
National Aeronautical Laboratory
Kodihalli
Bangalore - 560 017
4. The Director General
Council of Scientific & Industrial Research
Rafi Marg
New Delhi - 110 011
5. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/

~~ORDER~~ passed by this Tribunal in the above said application
on 20-11-87.

④ RECEIVED 1/12/87
3/12
Diary No. 1506/87
Date: 3-12-87

Encl: as above.

B. Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

dc

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 20TH DAY OF NOVEMBER, 1987

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
and
Hon'ble Shri P. Srinivasan, Member (A)

APPLICATION NO. 829/87

Shri Somashkar,
s/o Chinnappaiah,
aged about 36 years,
No.206, Kodihalli,
H.A.L. Post, Bangalore. Applicant.

(Shri B.A. Raja Rao Scindia, Advocate)

v.

1. The Director,
National Aeronautical Laboratory,
Kodihalli,
Bangalore.

2. The Director General,
Council of Scientific and
Industrial Research,
Rafi Marg,
New Delhi. Respondents.

(Shri M. Vasudeva Rao, C.G.A.S.C.)

This application having come up for hearing to-day,
Vice-Chairman made the following:

O R D E R

This is a transferred application and is received from
the High Court of Karnataka under Section 29 of the Adminis-
trative Tribunals Act, 1985 ('the Act').

2. On 17.1.1972 the applicant joined service in the
National Aeronautical Laboratory, Bangalore (NAL) as a
Junior Fitter Mechanic. On 18.4.1980 he was promoted
a Junior Technical Assistant. When he was working in



capacity, Disciplinary proceedings were instituted against him and the Disciplinary Authority ('DA') by his order made on 3.6.1982 (Annexure AE) imposed on him the penalty of compulsory retirement from service with immediate effect. Aggrieved by this order, the applicant filed an appeal before the Appellate Authority ('AA') who by his order made on 3.1.1983 (Annexure-AH) dismissed the same. In Writ Petition No.705/85 the applicant challenged the said orders which on transfer has been registered as A.No.829/87(T).

3. When Writ Petition No.705/85 was pending before the High Court, the applicant initiated proceedings under the Industrial Disputes Act, 1947 (ID Act) for a reference to the Labour Court. On an examination of his said claims Government of Karnataka had referred the dispute to Labour Court, Bangalore before which it is still pending disposal.

4. When the Writ Petition was pending before the High Court, the applicant filed a Memo on 27.7.1987 praying for permission to withdraw his Writ Petition with liberty reserved to pursue the reference pending before the Labour Court and the same reads thus:

"MEMO"

The petitioner abovenamed filed this writ petition against the order of dismissal dated 3.5.1982 passed by the Ist respondent dismissing him from service on compulsory retirement. After admission, this writ petition has not yet come up for hearing.

as
that

2. It is submitted, since the relationship between the petitioner and the 1st respondent is that of employee and employer, therefore, he has decided to agitate the matter before the Labour Court at Bangalore for the remedies open to him under the Industrial Disputes Act, 1947.

3. Therefore, it is respectfully submitted, without prejudice to his right to agitate all the contentions urged in this writ petition, in this Hon'ble Court, at the appropriate time in case the jurisdiction problem arises, that he may be permitted to withdraw the above writ petition, to meet the ends of justice.

Bangalore
22.7.1987

Sd/-
Advocate for petitioner"

But by the time the High Court could make its orders on the same the jurisdiction over the NAL was conferred on this Tribunal and therefore the High Court had transferred the writ petition and the Memo to this Tribunal for disposal.

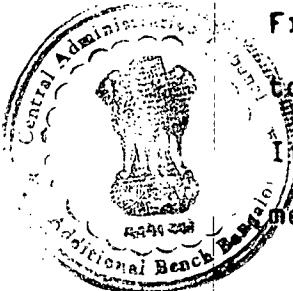
5. Shri B.A. Raja Rao Scindia, learned Counsel for the applicant, prays for permission to withdraw the Memo filed before the High Court on 27.7.1987 and permit the applicant to pursue the writ petition as a transferred application on merits.

6. Shri M. Vasudeva Rao appearing for Shri S.S. Ramdas learned Counsel for the respondents contends that the

applicant was bound by the Memo filed before the High Court and cannot be permitted to withdraw the same and pursue this transferred application on merits.

7. We have earlier reproduced the memo filed by the applicant before the High Court, when it had jurisdiction to deal with the writ petition filed by the applicant. In that memo, the applicant in unequivocal terms had stated that he proposes to withdraw that petition and pursue the remedy ^{he} had earlier chosen and pursued before the Labour Court under the ID Act.

8. When once the applicant had filed a memo in the very legal proceeding before the High Court to which this Tribunal had only succeeded, the applicant ~~was it~~ bound by the same and cannot resile from the same. Every sound principle of law, does not permit us to allow the applicant to withdraw the memo filed by him and pursue this legal proceeding instead of the other legal proceeding pending before the Labour Court. After all this Tribunal had only stepped into the shoes of the High Court and was the successor to the proceeding pending before the High Court on the appointed date. From this it follows that we cannot permit the applicant to withdraw the memo filed by him before the High Court. If that is so, then we cannot decide this application on merits at all.



9. What emerges from our above discussion is that this application is liable to be dismissed solely on the ground that the applicant had sought for permission to withdraw this application with liberty reserved to pursue the reference pending before the Labour Court under the ID Act. We accordingly accept the Memo filed by the applicant and dismiss this application as withdrawn by him with liberty reserved to pursue the reference pending before the Labour Court. But, in the circumstances of the case, we direct the parties to bear their own costs.

Sd/-
Vice-Chairman

20/11/87

Sd/-
Member (A)

-True Copy-

bsv/Mrv.



R. Venkatesh
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE