REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 17 NOV 1988

APPLICATION NO. 1786 /88(F)

W.P. NO. /

Applicant(s)

Shri R.C. Alandkar

To

Respondent(s)

V/s The Secretary, M/o Food & Civil Supplies, New Delhi & 2 Ors

1. Shri R.C. Alandkar
   Senior Artist
   Indian Institute of Horticultural
   Research (ICAR)
   No. 255, Upper Palace Orchards
   Bangalore - 560 006

2. Shri M.S. Bhagwath
   Advocate
   No. 68, Sharada Colony
   KHB Layout, Basaveswaranagar
   Bangalore - 560 079

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY/INTERIM ORDER~~ passed by this Tribunal in the above said application(s) on 3-11-88.

Issued
K. Nalgar
18-11-88

Encl : As above

c/c

SECTION OFFICER
~~(JUDICIAL/ADMINISTRATIVE)~~
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 3RD DAY OF NOVEMBER,1988.

PRESENT:

Hon'ble Mr.Justice K.S.Puttaswamy, .. Vice-Chairman.

And

Hon'ble Mr.L.H.A.Rego, .. Member(A).

APPLICATION NUMBER 1786 OF 1988

R.C.Alandkar,
S/o S.N.Alandkar,
Aged about 53 years,
Senior Artist,
Indian Institute of Horticultural
Research (ICAR) No.255,
Upper Palace Orchards,
Bangalore-560 006. .. Applicant.

(By Sri M.S.Bhagwath,Advocate)

v.

1. The Union of India
   by its Secretary,
   Ministry of Food & Civil Supplies,
   Department of Civil Supplies
   Shastry Bhavan,New Delhi.
2. The Secretary,
   Indian Council of Agricultural Research,
   Krishi Bhavan, New Delhi.
3. The Director,
   Indian Institute of Horticultural Research,
   No.256, Upper Palace Orchards,
   Bangalore-560 006. .. Respondents.

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

O R D E R

This is a classic case of abuse of legal process by an erstwhile civil servant of the Union of India endlessly fighting one and the same claim, believing in the familiar and distressing attitude or principle 'never say die', we have regretfully noticed in more than one case in our short experience. In order to appreciate these aspects and the contentions urged before us with considerable passion and vehemence as it generally happens in such cases, it is first necessary to notice the facts in some detail.

2. Sri R.C.Alandkar who is the applicant before us was working as an Assistant in the Arts and Crafts of the Department of Community Development and Co-operation, Ministry of Agriculture and Irrigation redesignated as Department of Civil Supplies and Co-operation from 26-7-1955 or from 24-12-1956 which is the date stated in the earlier proceedings. When so working, he applied for the post of a Senior Artist in the Indian Institute of Horticultural Research, Hesaraghatta ('IIHR') for which post he was selected on 1-3-1969. On that, the applicant tendered his unconditional resignation to Government service inter alia agreeing to forego all pension and terminal benefits and joined IIHR from 7-5-1969 from which date he is working there. But, before that, he had rendered about 14 or 15 years of service in Government.

3. On joining IIHR, the applicant claimed before Government pensionary and other terminal benefits due to him for the service he had rendered in Government which was not acceded to by Government on 12-11-1974 and thereafter, the validity of which was challenged by him on 4-3-1985 in Writ Petition No.5934 of 1985 before the High Court of Karnataka.

4. On the constitution of this Tribunal, Writ Petition No.5934 of 1985 was transferred to this Bench and was registered as Application No.1440 of 1986.

5. On 24-4-1987 a Division Bench of this Tribunal consisting of Hon'ble Sri Ch.Ramakrishna Rao and Hon'ble Sri P.Srinivasan upholding the contentions urged by the respondents dismissed the same. On 25-5-1987, the applicant made an application under Section 22(3)(f) of the Administrative Tribunals Act,1985 ('the Act') in Review Application No.59 of 1987 for a review of that order and the same was admitted by us on 18-6-1987. On 23-7-1987 the very Bench that heard and decided Application No.1440 of 1986 (T) however dismissed the same. Against the orders of this Tribunal dismissing his transferred

Application No.1440 of 1986 and R.A.No.59 of 1987 the applicant approached the Supreme Court of India under Article 136 of the Constitution in Special Leave Petition No.8860 of 1988, which came up for admission on 31-8-1988 before a Division Bench of that Court consisting of Oza and Jagannatha Shetty,JJ. which dismissed the same in these words as withdrawn by the applicant:-

"The special leave petition is dismissed as withdrawn".

6. On 5-10-1988 the applicant made an application before this Tribunal numbered as Miscellaneous Application No.3 of 1988 seeking to recall the orders made in Review Application No.59 of 1987 and Applciation No.1440 of 1986 which came up for hearing on 14-10-1988 before a Division Bench consisting of one of us [Sri L.H.A.Rego,-Member(A)] and Hon'ble Sri Ch.Ramakrishna Rao, Member (J). On that day Sri M.S.Bhagwath, learned Advocate who was representing the applicant in that case also, sought for permission to withdraw the same with liberty to file a fresh application which was not opposed by Sri M.S.Padmarajaiah, learned Senior Central Government Standing Counsel appearing for the respondents in that case. On the same day that Division Bench allowed the said prayer of the applicant and made an order in these terms:

> "Applicant by Sri M.S.Bhagwath. Shri M.S.Padmarajaiah who was served with a copy of the notice by the applicant present for the respondents.
>
> Shri Bhagwath seeks permission to withdraw this miscellaneous application with liberty to file a fresh application. Shri Padmarajaiah does not oppose.
>
> Permission granted. This application disposed of accordingly."

Undaunted by all his earlier failures to obtain permission and terminal benefits for his service rendered in Government, the applicant has made this fresh original application on 1-11-1988 under Section 19 of the Act seeking for those very reliefs however camouflaging the same in different words or artifices.

7. On an in-depth examination of this application and the earlier

proceedings in Application No.1440 of 1986, the Registrar of this Bench has opined that in this application, the applicant seeks to agitate the very claim which he unsuccessfully agitated in Application No.1440 of 1986 and the same is, therefore, barred by res judicata.

8. We have perused the office objections and heard Sri Bhagwath for more than an hour.

9. Sri Bhagwath seriously disputing the correctness of the objections raised by the Registrar, vehemently contends that this application is not barred by the technical rule of res judicata which was totally inapplicable to labour and service disputes and therefore, the same calls for admission, determination of every one of the questions raised by the applicant and grant of all the reliefs sought by him in his application. In support of his contention Sri Bhagwath strongly relies on the ruling of the Supreme Court in WORKMEN OF THE STRAW BOARD MANUFACTURING COMPANY LIMITED v. M/s STRAW BOARD MANUFACTURING COMPANY LIMITED [1974 SCC (L&S) 406 at para 27] ('Straw Board's case').

10. On his unconditional resignation from service on 7-5-1969 on which day there was severance of status between him and Government, Government rejected his claim for pension and other retiral benefits. On that, he approached the High Court of Karnataka in Writ Petition No.5934/85 which was rejected by this Tribunal in Application No.1440 of 1986 and R.A.No.59 of 1987. Thereon, the applicant approached the Supreme Court under Article 136 of the Constitution in S.L.P.No.-8860 of 1988 which he withdrew on 31-8-1988 without seeking liberty to agitate the same anew either before Government or Courts/Tribunals. On the principles enunciated by the Supreme Court in SARGUJA TRANSPORT SERVICE v. STATE TRANSPORT APPELLATE TRIBUNAL, GWALIOR AND OTHERS (AIR 1987 SC 88), this must be construed as the applicant abandoning his claim concluded against him by the orders of this Tribunal. With this, the matter should have normally ended. But, alas, that did not happen.

11. On 5-10-1988, the applicant made an application before this Bench registered as Miscellaneous Application No.3 of 1988 for recalling the orders made against him in Application No.1440 of 1986 and R.A.No.59 of 1987, which he withdrew on 14-10-1988 with liberty to file a fresh application, which was granted by a Division Bench consisting of one of us (Sri L.H.A.Rego) and Hon'ble Sri Ch.Ramakrishna Rao, which decision we have earlier extracted. Evidently on the basis of this order, the present application is made.

12. We are of the view that Miscellaneous Application No.3 of 1988 was clearly misconceived and was not maintainable in law. On withdrawing such an application, the question of this Tribunal granting leave to file a fresh application to re-agitate matters that had been concluded in Application No.1440 of 1986, R.A.No.59 of 1987 and S.L.P.No.8860 of 1988 did not at all arise. In any event the order made on 14-10-1988 in Miscellaneous Application No.3 of 1988 cannot be construed as undoing what had been done in Application No.1440 of 1986, R.A.No.59 of 1987 and S.L.P.No.8860 of 1988. On this view, the applicant cannot place any reliance on the order made on 14-10-1988 in Miscellaneous Application No.3 of 1988. We, therefore, proceed to decide this case without reference to that order.

13. An examination of the claim of the applicant in this application by employing different words or couching them differently to camouflage the earlier orders of this Tribunal, shows that the applicant in truth and reality is agitating the very claims he agitated in Application No.1440 of 1986, R.A.No.59 of 1987 and S.L.P.No.8860 of 1988 and seek the very reliefs prayed for in his earlier application. On this conclusion on facts, we now proceed to examine the objections raised by the Registrar and countered by Sri Bhagwath.

14. In DARYAO AND OTHERS v. STATE OF U.P. AND OTHERS (AIR 1961 SC 1457) a Constitution Bench of 5 learned Judges of the Supreme Court speaking through Gajendragadkar,J.(as His Lordship then was)

reviewing all the leading English and Indian authorities explained the juristic principle of res judicata and its application to all legal proceedings in our country in these words:

> "(9) But, is the rule of res judicata merely a technical rule or is it based on high public policy? If the rule of res judicata itself embodies a principle of public policy which in turn is an essential part of the rule of law then the objection that the rule cannot be invoked where fundamental rights are in question may lose much of its validity. Now, the rule of res judicata as indicated in S.11 of the Code of Civil Procedure has no doubt some technical aspects, for instance, the rule of constructive res judicata may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of res judicata they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under ARt.32.
>
> (10) In considering the essential elements of res judicata one inevitably harks back to the judgment of Sir William B.Hale in the leading Duchess of Kingston's case, 2 Smith Lead Cas. 13th Ed. pp.644, 645. Said Sir William B.Hale "from the variety of cases relative to judgments being given in evidence in civil suits, these two deductions seem to follow as generally true: First, that the judgment of a ourt of concurrent jurisdiction, directly upon the point, is a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question in another court; Secondly, that the judgment of a court of exclusive jurisdiction, directly upon the point, is in like manner conclusive upon the same matter, between the same parties, coming incidentally in question in another Court for a different purpose". As has been observed by Halsbury, "the doctrine of res judicata is not a technical doctrine applicable only to records; it is a fundamental doctrine of all courts that there must be an end of litigation". Halsbury's Law of England, 3rd Ed.Vol.15, Paragraph 357. p 185. Halsbury also adds that the doctrine applies equally in all Courts, and it is immaterial in what court the former proceeding was taken, provided only that it was a court of competent jurisdiction, or what form the proceeding took, provided it was really for the same cause" (p.187. paragraph 362). "Res judicata", it is observed in Corpus Juris "is a rule of universal Law pervading every well regulated system of jurisprudence, and is put upon two grounds embodied in various maxims of the common law; the one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation - interest republicae ut sit finis litium; the other, the hardship on the individual that he should be vexed twice for the same cause - nemo debet bis vexari pro eadem causa", Corpus Juris, Vol.34, p.743. In this sense the recognised basis of the rule of res judicata is different from that of technical estoppel. "Estoppel rests on equitable principles and res judicata rests on

maxims which are taken from the Roman Law", Ibid p.745. Therefore, the argument that res judicata is a technical rule and as such is irrelevant in dealing with petitions under Art.32 cannot be accepted.

(11) The same question can be considered from another point of view. If a judgment has been pronounced by a Court of competent jurisdiction it is binding between the parties unless it is reversed or modified by appeal, revision or other procedure prescribed by law. Therefore, if a judgment has been pronounced by the High Court in a writ petition filed by a party rejecting his prayer for the issue of an appropriate writ on the ground either that he had no fundamental right as pleaded by him or there has been no contravention of the right proved or that the contravention is justified by the Constitution itself, it must remain binding between the parties unless it is attacked by adopting the procedure prescribed by the Constitution itself. The binding character of judgments pronounced by Courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis. As Halsbury has observed "subject to appeal and to being amended or set aside a judgment is conclusive as beteen the parties and their privies, and is conclusive evidence against all the world of its existence, date and legal consequences" Halsbury's Laws of England, 3rd Ed., Vol.22 p.780 paragraph 1660. Similar is the statement of the law in Corpus Juris: "the doctrine of estoppel by judgment does not rest on any superior authority of the court rendering the judgment and a judgment of one court is a bar to an action between the same parties for the same cause in the same court or in another court, whether the latter has concurrent or other jurisdiction. The rule is subject to the limitation that the judgment in the former action must have been rendered by a court or tribunal of competent jurisdiction", Corpus Juris Secundum Vol.50 (Judgments) p.603. "It is, however, essential that there should have been a judicial determination of rights in controversy with a final decision thereon", Ibid.p.608. In other words, an original petition for a writ under Art.32 cannot take the place of an appeal against the order passed by the High Court in the petition filed before it under Art.226. There can be little doubt that the jurisdiction of this Court to entertain applications under Art.32 which are original cannot be confused or mistaken or used for the appellate jurisdiction of this Court which alone can be invoked for correcting errors in the decisions of High Courts pronounced in writ petitions under Art.226. Thus, on general considerations of public policy there seem to be no reason why the rule of res judicata should be treated as inadmissible or irrelevant in dealing with petitions filed under Art.32 of the Constitution. It is true that the general rule can be invoked only in cases where a dispute between the parties has been referred to a court of competent jurisdiction, there has been a contest between the parties before the court, a fair opportunity has been given to both of them to prove their case, and at the end the court has pronounced its judgment or decision. Such a decision pronounced by a court of competent jurisdiction is binding between the parties unless it is modified or reversed by adopting a procedure prescribed by the Constitution. In our opinion, therefore, the plea that the general rule of res judicata should not be allowed to be invoked cannot be sustained.

(12) This Court had occasion to consider the application of the rule of res judicata to a petition filed under Art.32 in M.S.M.Sharma v. Dr.Shree Krishna Sinha, AIR 1960 SC 1186. In that case the petitioner had moved this Court under Art.32 and claimed an appropriate writ against the Chairman and the Members of the Committee of Privileges of the State Legislative Assembly. The said petition was dismissed. Subsequently he filed another petition substantially for the same relief and substantially on the same allegations. One of the points which then arose for the decision of this Court was whether the second petition was competent, and this Court held that it was not because of the rule of res judicata. It is true that the earlier decision on which res judicata was pleaded was a decision of this Court in a petition filed under Art.32 and in that sense the background of the dispute was different, because the judgment on which the plea was based was a judgment of this Court and not of any High Court. Even so, this decision affords assistance in determining the point before us. In upholding the plea of res judicata this Court observed that the question determined by the previous decision of this Court cannot be reopened in the present case and must govern the rights and obligations of the parties which are substantially the same. In support of this decision Sinha,CJ., who spoke for the Court, referred to the earlier decision of this Court in Raj Lakshmi Dasi v. Banamali Sen, 1953 sCR 154: (AIR 1953 SC 33), and observed that the principle underlying res judicata is applicable in respect of a question which has been raised and decided after full contest, even though the first Tribunal which decided the matter may have no jurisdiction to try the subsequent suit and even though the subject-matter of dispute was not exactly the same in the two proceedings. We may add incidentally that the Court which tried the earlier proceedings in the case of RajLakshmi Dasi,1953 SCR 154 (AIR 1953 SC 33), was a Court of exclusive jurisdiction. Thus this decision establishes the principle that the rule of res judicata can be invoked even against a petition filed under Art.32.

xx xx xx

(19) We must now proceed to state our conclusion on the preliminary objection raised by the respondents. We hold that if a writ petition filed by a party under Art.226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. It would not be open to a party to ignore the said judgment and move this Court under Art. 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs. If the petition filed in the High Court under Art.226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Art.32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Art.32. If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the order shows that the dismissal was for the reason that the peti-

petitioner was guilty of laches or that he had an alternative remedy it would not be a bar, except in cases which we have already indicated. If the petition is dismissed in limine without passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata. It is true that, prima facie, dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all; but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of res judicata against a similar petition filed under Art.32. If the petition is dismissed as withdrawn it cannot be a bar to subsequent petition under Art.32 because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other. It is in the light of this decision that we will now proceed to examine the position in the six petitions before us."

On the application of these principles to the facts of this case, there can hardly be any doubt, on the correctness of the objections raised by the Registrar. If that is so, then we are bound to uphold the objections and reject this application on that ground.

15. In Straw Board's case, 3 learned Judges of the Court dealing with the claim of workmen for compensation on the closure of the mill where they were working and the several issues that arose before it on appeal, on the applicability or otherwise of the juristic principle of res judicata to industrial adjudications had expressed thus:-

"27. It is now well-established that although the entire Civil Procedure Code is not applicable to industrial adjudication, the principles of res judicata laid down under Section 11 of the Code of Civil Procedure, however, are applicable, whatever possible, for very good reasons. This is so since multiplicity of litigation and agitation and re-agitation of the same dispute at issue between the same employer and his employees will not be conducive to industrial peace which is the principal object of all labour legislation bearing on industrial adjudication. But whether a matter in dispute in a subsequent case had earlier been directly and substantially in issue between the same parties and the same had been heard and finally decided by the Tribunal will be of pertinent consideration and will have to be determined before holding in a particular case that the principles of res judicata are attracted.

28. The learned counsel faced with the problem drew our attention to Rule 18 of the U.P.Industrial Tribunal and Labour Courts Rules of Procedure, 1967, which provides that after the written statements and rejoinders, if any, of both the parties are filed and after examination of parties, if any, the Industrial Tribunal or Labour Court may frame such other issues, if any, as may arise from

the pleadings. It is clear that these issues are framed by the Tribunal to assit in adjudication. While it cannot be absolutely ruled out that in a given case such an additional issue may sometimes attract the principle of res judicata, the heart of the matter will always be: What was the substantial question that came up for decision in the earlier proceedings? Some additional issues may be framed in order to assit the Tribunal to better appreciate the case of the parties with reference to the principal issue which has been referred to for adjudication and on the basis of which, for example, as to whether it is an industrial dispute or not, the jurisdiction of the Tribunal will have to be determined. The reasons for the decision in connection with the adjudication of the principal issue cannot be considered as the decision itself to attract the plea of res judicata. The earlier question at issue must be relevant and germane in determining the question of res judicata in the subsequent proceedings. The real character of the controversy between the parties is the determining factor and in complex and manifold human relations between labourand capital giving rise to diverse kinds of reptures of varying nuances no castiron rule can be laid down.

29. Some distinction, of whatever shade or magnitude, may have to be borne in mind in application of the principles of res judicata in industrial adjucation in contra-distinction to civil proceedings. Extremely technical considerations, usually invoked in civil proceedings, may not be allowed to outweigh substantial justice to the parties in an industrial adjudication."

We are of the view that these observations which are not in confict with the principles of res judicata enunciated in Daryao's case, do not support the frivolous contention urged by Sri Bhagwath. On any view, the law declared by a larger Bench of the Court in Daryao's case which is directly on the point governs this question. For all these reasons, we see no merit in this contention of Sri Bhagwath and we reject the same.

16. Sri Bhagwath next contends that on the terms of Section 22 of the Act, this Tribunal was bound to apply only the principles of natural justice and no other legal principle including the principle of res judicata to the proceedings under the Act.

17. Section 22 of the Act providing for regulating procedural matters to the extent they are not dealt with in the Act and the Rules made thereunder enjoins on this Tribunal to regulate them in accordance with the principles of natural justice evolved by courts

to render justice. We are of the view that Section 22 of the Act does not empower us to ignore valid and binding orders between the same parties and undo all of them including the juristic principle of res judicata which is equally applicable to all legal proceedings, which necessarily include the proceedings under the Act. We are of the view that if we were to accede to this extraordinary contention of Sri Bhagwath, we would not be helping in the administration of law and justice for which only, this Tribunal as a substitute to the High Court had been constituted but on the contrary would only be instrumental in giving rise to chaos and disorder in the administration of law and justice. On any principle and authority we should refrain from doing so. We see no merit in this contention of Sri Bhagwath and therefore reject the same.

17. In the light of our above discussion, we uphold the office objections and reject this application at the admission stage itself in limine without notices to the respondents.

Sd/-
VICE-CHAIRMAN
3/11/1988.

Sd/-
MEMBER(A)
3.11.88

TRUE COPY

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
*****

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 22 NOV 1988

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Sir,

I am directed to forward herewith a copy of the under mentioned order passed by a Bench of this Tribunal comprising of Hon'ble Mr. Justice K.S. Puttaswamy Vice-Chairman/~~Member(J)~~ and Hon'ble Mr. L.H.A. Rego Member (A) with a request for publication of the order in the journals.

Order dated 3-11-88 passed in A.Nos 1786/88(F).

Yours faithfully,

for DEPUTY REGISTRAR(J)

Issued
24-11-88

Copy with enclosures forwarded for information to:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi - 110 001.

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8. The Registrar, Central Administrative Tribunal, Kandamkulathil Towers, 5th & 6th Floors, Opp. Maharaja College, M.G. Road, Ernakulam, Cochin - 682 001.

9. The Registrar, Central Administrative Tribunal, CARAVS Complex, 15 Civil Lines, Jabalpur (MP).

10. The Registrar, Central Administrative Tribunal, 88-A B.M. Enterprised, Shri Krishna Nagar, Patna - 1 (Bihar).

11. The Registrar, Central Administrative Tribunal, C/o Rajasthan High Court, Jodhpur (Rajasthan).

12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.

13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanapura, Ahmedabad (Gujarat).

14. The Registrar, Central Administrative Tribunal, Dolamundai, Cuttak - 753 001 (Orissa).

Copy with enclosures also to :

1. Court Officer (Court I)

2. Court Officer (Court II)

Sd/-

(XXX×XXXXXXXX REDDY)

for DEPUTY REGISTRAR (J)

Issued
K. Nair
24-11-88

9/c

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 3RD DAY OF NOVEMBER,1988.

PRESENT:

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And

Hon'ble Mr.L.H.A.Rego, .. Member(A).

APPLICATION NUMBER 1786 OF 1988

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(By Sri M.S.Bhagwath,Advocate)

v.

1. The Union of India
   by its Secretary,
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2. The Secretary,
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3. The Director,
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3. On joining IIHR, the applicant claimed before Government pensionary and other terminal benefits due to him for the service he had rendered in Government which was not acceded to by Government on 12-11-1974 and thereafter, the validity of which was challenged by him on 4-3-1985 in Writ Petition No.5934 of 1985 before the High Court of Karnataka.

4. On the constitution of this Tribunal, Writ Petition No.5934 of 1985 was transferred to this Bench and was registered as Application No.1440 of 1986.

5. On 24-4-1987 a Division Bench of this Tribunal consisting of Hon'ble Sri Ch.Ramakrishna Rao and Hon'ble Sri P.Srinivasan upholding the contentions urged by the respondents dismissed the same. On 25-5-1987, the applicant made an application under Section 22(3)(f) of the Administrative Tribunals Act,1985 ('the Act') in Review Application No.59 of 1987 for a review of that order and the same was admitted by us on 18-6-1987. On 23-7-1987 the very Bench that heard and decided Application No.1440 of 1986 (T) however dismissed the same. Against the orders of this Tribunal dismissing his transferred

Application No.1440 of 1986 and R.A.No.59 of 1987 the applicant approached the Supreme Court of India under Article 136 of the Constitution in Special Leave Petition No.8860 of 1988, which came up for admission on 31-8-1988 before a Division Bench of that Court consisting of Oza and Jagannatha Shetty,JJ. which dismissed the same in these words as withdrawn by the applicant:-

"The special leave petition is dismissed as withdrawn".

6. On 5-10-1988 the applicant made an application before this Tribunal numbered as Miscellaneous Application No.3 of 1988 seeking to recall the orders made in Review Application No.59 of 1987 and Applciation No.1440 of 1986 which came up for hearing on 14-10-1988 before a Division Bench consisting of one of us [Sri L.H.A.Rego,-Member(A)] and Hon'ble Sri Ch.Ramakrishna Rao, Member (J). On that day Sri M.S.Bhagwath, learned Advocate who was representing the applicant in that case also, sought for permission to withdraw the same with liberty to file a fresh application which was not opposed by Sri M.S.Padmarajaiah, learned Senior Central Government Standing Counsel appearing for the respondents in that case. On the same day that Division Bench allowed the said prayer of the applicant and made an order in these terms:

> "Applicant by Sri M.S.Bhagwath. Shri M.S.Padmarajaiah who was served with a copy of the notice by the applicant present for the respondents.
>
> Shri Bhagwath seeks permission to withdraw this miscellaneous application with liberty to file a fresh application. Shri Padmarajaiah does not oppose.
>
> Permission granted. This application disposed of accordingly."

Undaunted by all his earlier failures to obtain permission and terminal benefits for his service rendered in Government, the applicant has made this fresh original application on 1-11-1988 under Section 19 of the Act seeking for those very reliefs however camouflaging the same in different words or artifices.

7. On an in-depth examination of this application and the earlier

proceedings in Application No.1440 of 1986, the Registrar of this Bench has opined that in this application, the applicant seeks to agitate the very claim which he unsuccessfully agitated in Application No.1440 of 1986 and the same is, therefore, barred by res judicata.

8. We have perused the office objections and heard Sri Bhagwath for more than an hour.

9. Sri Bhagwath seriously disputing the correctness of the objections raised by the Registrar, vehemently contends that this application is not barred by the technical rule of res judicata which was totally inapplicable to labour and service disputes and therefore, the same calls for admission, determination of every one of the questions raised by the applicant and grant of all the reliefs sought by him in his application. In support of his contention Sri Bhagwath strongly relies on the ruling of the Supreme Court in WORKMEN OF THE STRAW BOARD MANUFACTURING COMPANY LIMITED v. M/s STRAW BOARD MANUFACTURING COMPANY LIMITED [1974 SCC (L&S) 406 at para 27] ('Straw Board's case').

10. On his unconditional resignation from service on 7-5-1969 on which day there was severance of status between him and Government, Government rejected his claim for pension and other retiral benefits. On that, he approached the High Court of Karnataka in Writ Petition No.5934/85 which was rejected by this Tribunal in Application No.1440 of 1986 and R.A.No.59 of 1987. Thereon, the applicant approached the Supreme Court under Article 136 of the Constitution in S.L.P.No.-8860 of 1988 which he withdrew on 31-8-1988 without seeking liberty to agitate the same anew either before Government or Courts/Tribunals. On the principles enunciated by the Supreme Court in SARGUJA TRANSPORT SERVICE v. STATE TRANSPORT APPELLATE TRIBUNAL, GWALIOR AND OTHERS (AIR 1987 SC 88), this must be construed as the applicant abandoning his claim concluded against him by the orders of this Tribunal. With this, the matter should have normally ended. But, alas, that did not happen.

11. On 5-10-1988, the applicant made an application before this Bench registered as Miscellaneous Application No.3 of 1988 for recalling the orders made against him in Application No.1440 of 1986 and R.A.No.59 of 1987, which he withdrew on 14-10-1988 with liberty to file a fresh application, which was granted by a Division Bench consisting of one of us (Sri L.H.A.Rego) and Hon'ble Sri Ch.Ramakrishna Rao, which decision we have earlier extracted. Evidently on the basis of this order, the present application is made.

12. We are of the view that Miscellaneous Application No.3 of 1988 was clearly misconceived and was not maintainable in law. On withdrawing such an application, the question of this Tribunal granting leave to file a fresh application to re-agitate matters that had been concluded in Application No.1440 of 1986, R.A.No.59 of 1987 and S.L.P.No.8860 of 1988 did not at all arise. In any event the order made on 14-10-1988 in Miscellaneous Application No.3 of 1988 cannot be construed as undoing what had been done in Application No.1440 of 1986, R.A.No.59 of 1987 and S.L.P.No.8860 of 1988. On this view, the applicant cannot place any reliance on the order made on 14-10-1988 in Miscellaneous Application No.3 of 1988. We, therefore, proceed to decide this case without reference to that order.

13. An examination of the claim of the applicant in this application by employing different words or couching them differently to camouflage the earlier orders of this Tribunal, shows that the applicant in truth and reality is agitating the very claims he agitated in Application No.1440 of 1986, R.A.No.59 of 1987 and S.L.P.No.8860 of 1988 and seek the very reliefs prayed for in his earlier application. On this conclusion on facts, we now proceed to examine the objections raised by the Registrar and countered by Sri Bhagwath.

14. In DARYAO AND OTHERS v. STATE OF U.P. AND OTHERS (AIR 1961 SC 1457) a Constitution Bench of 5 learned Judges of the Supreme Court speaking through Gajendragadkar,J.(as His Lordship then was)

reviewing all the leading English and Indian authorities explained the juristic principle of res judicata and its application to all legal proceedings in our country in these words:

> "(9) But, is the rule of res judicata merely a technical rule or is it based on high public policy? If the rule of res judicata itself embodies a principle of public policy which in turn is an essential part of the rule of law then the objection that the rule cannot be invoked where fundamental rights are in question may lose much of its validity. Now, the rule of res judicata as indicated in S.11 of the Code of Civil Procedure has no doubt some technical aspects, for instance, the rule of constructive res judicata may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of res judicata they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under ARt.32.
>
> (10) In considering the essential elements of res judicata one inevitably harks back to the judgment of Sir William B.Hale in the leading Duchess of Kingston's case, 2 Smith Lead Cas. 13th Ed. pp.644, 645. Said Sir William B.Hale "from the variety of cases relative to judgments being given in evidence in civil suits, these two deductions seem to follow as generally true: First, that the judgment of a ourt of concurrent jurisdiction, directly upon the point, is a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question in another court; Secondly, that the judgment of a court of exclusive jurisdiction, directly upon the point, is in like manner conclusive upon the same matter, between the same parties, coming incidentally in question in another Court for a different purpose". As has been observed by Halsbury, "the doctrine of res judicata is not a technical doctrine applicable only to records; it is a fundamental doctrine of all courts that there must be an end of litigation". Halsbury's Law of England, 3rd Ed.Vol.15, Paragraph 357. p 185. Halsbury also adds that the doctrine applies equally in all Courts, and it is immaterial in what court the former proceeding was taken, provided only that it was a court of competent jurisdiction, or what form the proceeding took, provided it was really for the same cause" (p.187. paragraph 362). "Res judicata", it is observed in Corpus Juris "is a rule of universal Law pervading every well regulated system of jurisprudence, and is put upon two grounds embodied in various maxims of the common law; the one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation - interest republicae ut sit finis litium; the other, the hardship on the individual that he should be vexed twice for the same cause - nemo debet bis vexari pro eadem causa", Corpus Juris, Vol.34, p.743. In this sense the recognised basis of the rule of res judicata is different from that of technical estoppel. "Estoppel rests on equitable principles and res judicata rests on

maxims which are taken from the Roman Law", Ibid p.745. Therefore, the argument that res judicata is a technical rule and as such is irrelevant in dealing with petitions under Art.32 cannot be accepted.

(11) The same question can be considered from another point of view. If a judgment has been pronounced by a Court of competent jurisdiction it is binding between the parties unless it is reversed or modified by appeal, revision or other procedure prescribed by law. Therefore, if a judgment has been pronounced by the High Court in a writ petition filed by a party rejecting his prayer for the issue of an appropriate writ on the ground either that he had no fundamental right as pleaded by him or there has been no contravention of the right proved or that the contravention is justified by the Constitution itself, it must remain binding between the parties unless it is attacked by adopting the procedure prescribed by the Constitution itself. The binding character of judgments pronounced by Courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis. As Halsbury has observed "subject to appeal and to being amended or set aside a judgment is conclusive as beteen the parties and their privies, and is conclusive evidence against all the world of its existence, date and legal consequences" Halsbury's Laws of England, 3rd Ed., Vol.22 p.780 paragraph 1660. Similar is the statement of the law in Corpus Juris: "the doctrine of estoppel by judgment does not rest on any superior authority of the court rendering the judgment and a judgment of one court is a bar to an action between the same parties for the same cause in the same court or in another court, whether the latter has concurrent or other jurisdiction. The rule is subject to the limitation that the judgment in the former action must have been rendered by a court or tribunal of competent jurisdiction", Corpus Juris Secundum Vol.50 (Judgments) p.603. "It is, however, essential that there should have been a judicial determination of rights in controversy with a final decision thereon", Ibid.p.608. In other words, an original petition for a writ under Art.32 cannot take the place of an appeal against the order passed by the High Court in the petition filed before it under Art.226. There can be little doubt that the jurisdiction of this Court to entertain applications under Art.32 which are original cannot be confused or mistaken or used for the appellate jurisdiction of this Court which alone can be invoked for correcting errors in the decisions of High Courts pronounced in writ petitions under Art.226. Thus, on general considerations of public policy there seem to be no reason why the rule of res judicata should be treated as inadmissible or irrelevant in dealing with petitions filed under Art.32 of the Constitution. It is true that the general rule can be invoked only in cases where a dispute between the parties has been referred to a court of competent jurisdiction, there has been a contest between the parties before the court, a fair opportunity has been given to both of them to prove their case, and at the end the court has pronounced its judgment or decision. Such a decision pronounced by a court of competent jurisdiction is binding between the parties unless it is modified or reversed by adopting a procedure prescribed by the Constitution. In our opinion, therefore, the plea that the general rule of res judicata should not be allowed to be invoked cannot be sustained.

(12) This Court had occasion to consider the application of the rule of res judicata to a petition filed under Art.32 in M.S.M.Sharma v. Dr.Shree Krishna Sinha, AIR 1960 SC 1186. In that case the petitioner had moved this Court under Art.32 and claimed an appropriate writ against the Chairman and the Members of the Committee of Privileges of the State Legislative Assembly. The said petition was dismissed. Subsequently he filed another petition substantially for the same relief and substantially on the same allegations. One of the points which then arose for the decision of this Court was whether the second petition was competent, and this Court held that it was not because of the rule of res judicata. It is true that the earlier decision on which res judicata was pleaded was a decision of this Court in a petition filed under Art.32 and in that sense the background of the dispute was different, because the judgment on which the plea was based was a judgment of this Court and not of any High Court. Even so, this decision affords assistance in determining the point before us. In upholding the plea of res judicata this Court observed that the question determined by the previous decision of this Court cannot be reopened in the present case and must govern the rights and obligations of the parties which are substantially the same. In support of this decision Sinha,CJ., who spoke for the Court, referred to the earlier decision of this Court in Raj Lakshmi Dasi v. Banamali Sen, 1953 sCR 154: (AIR 1953 SC 33), and observed that the principle underlying res judicata is applicable in respect of a question which has been raised and decided after full contest, even though the first Tribunal which decided the matter may have no jurisdiction to try the subsequent suit and even though the subject-matter of dispute was not exactly the same in the two proceedings. We may add incidentally that the Court which tried the earlier proceedings in the case of RajLakshmi Dasi,1953 SCR 154 (AIR 1953 SC 33), was a Court of exclusive jurisdiction. Thus this decision establishes the principle that the rule of res judicata can be invoked even against a petition filed under Art.32.

xx xx xx

(19) We must now proceed to state our conclusion on the preliminary objection raised by the respondents. We hold that if a writ petition filed by a party under Art.226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. It would not be open to a party to ignore the said judgment and move this Court under Art. 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs. If the petition filed in the High Court under Art.226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Art.32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Art.32. If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the order shows that the dismissal was for the reason that the peti-

petitioner was guilty of laches or that he had an alternative remedy it would not be a bar, except in cases which we have already indicated. If the petition is dismissed in limine without passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata. It is true that, prima facie, dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all; but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of res judicata against a similar petition filed under Art.32. If the petition is dismissed as withdrawn it cannot be a bar to subsequent petition under Art.32 because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other. It is in the light of this decision that we will now proceed to examine the position in the six petitions before us."

On the application of these principles to the facts of this case, there can hardly be any doubt, on the correctness of the objections raised by the Registrar. If that is so, then we are bound to uphold the objections and reject this application on that ground.

15. In Straw Board's case, 3 learned Judges of the Court dealing with the claim of workmen for compensation on the closure of the mill where they were working and the several issues that arose before it on appeal, on the applicability or otherwise of the juristic principle of res judicata to industrial adjudications had expressed thus:-

"27. It is now well-established that although the entire Civil Procedure Code is not applicable to industrial adjudication, the principles of res judicata laid down under Section 11 of the Code of Civil Procedure, however, are applicable, whatever possible, for very good reasons. This is so since multiplicity of litigation and agitation and re-agitation of the same dispute at issue between the same employer and his employees will not be conducive to industrial peace which is the principal object of all labour legislation bearing on industrial adjudication. But whether a matter in dispute in a subsequent case had earlier been directly and substantially in issue between the same parties and the same had been heard and finally decided by the Tribunal will be of pertinent consideration and will have to be determined before holding in a particular case that the principles of res judicata are attracted.

28. The learned counsel faced with the problem drew our attention to Rule 18 of the U.P.Industrial Tribunal and Labour Courts Rules of Procedure, 1967, which provides that after the written statements and rejoinders, if any, of both the parties are filed and after examination of parties, if any, the Industrial Tribunal or Labour Court may frame such other issues, if any, as may arise from

> the pleadings. It is clear that these issues are framed by the Tribunal to assit in adjudication. While it cannot be absolutely ruled out that in a given case such an additional issue may sometimes attract the principle of res judicata, the heart of the matter will always be: What was the substantial question that came up for decision in the earlier proceedings? Some additional issues may be framed in order to assit the Tribunal to better appreciate the case of the parties with reference to the principal issue which has been referred to for adjudication and on the basis of which, for example, as to whether it is an industrial dispute or not, the jurisdiction of the Tribunal will have to be determined. The reasons for the decision in connection with the adjudication of the principal issue cannot be considered as the decision itself to attract the plea of res judicata. The earlier question at issue must be relevant and germane in determining the question of res judicata in the subsequent proceedings. The real character of the controversy between the parties is the determining factor and in complex and manifold human relations between labourand capital giving rise to diverse kinds of reptures of varying nuances no castiron rule can be laid down.
>
> 29. Some distinction, of whatever shade or magnitude, may have to be borne in mind in application of the principles of res judicata in industrial adjucation in contra-distinction to civil proceedings. Extremely technical considerations, usually invoked in civil proceedings, may not be allowed to outweigh substantial justice to the parties in an industrial adjudication."

We are of the view that these observations which are not in confict with the principles of res judicata enunciated in Daryao's case, do not support the frivolous contention urged by Sri Bhagwath. On any view, the law declared by a larger Bench of the Court in Daryao's case which is directly on the point governs this question. For all these reasons, we see no merit in this contention of Sri Bhagwath and we reject the same.

16. Sri Bhagwath next contends that on the terms of Section 22 of the Act, this Tribunal was bound to apply only the principles of natural justice and no other legal principle including the principle of res judicata to the proceedings under the Act.

17. Section 22 of the Act providing for regulating procedural matters to the extent they are not dealt with in the Act and the Rules made thereunder enjoins on this Tribunal to regulate them in accordance with the principles of natural justice evolved by courts

to render justice. We are of the view that Section 22 of the Act does not empower us to ignore valid and binding orders between the same parties and undo all of them including the juristic principle of res judicata which is equally applicable to all legal proceedings, which necessarily include the proceedings under the Act. We are of the view that if we were to accede to this extraordinary contention of Sri Bhagwath, we would not be helping in the administration of law and justice for which only, this Tribunal as a substitute to the High Court had been constituted but on the contrary would only be instrumental in giving rise to chaos and disorder in the administration of law and justice. On any principle and authority we should refrain from doing so. We see no merit in this contention of Sri Bhagwath and therefore reject the same.

17. In the light of our above discussion, we uphold the office objections and reject this application at the admission stage itself in limine without notices to the respondents.

Sd/-
VICE-CHAIRMAN.
3/11/1988

Sd/-
MEMBER(A)
3.11.88

np/

TRUE COPY

SECTION OFFICER 22/11
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Read today 15/1/90

Shri R.K.

D.No. 1367/1891 Sec-IVA
SUPREME COURT OF INDIA
NEW DELHI

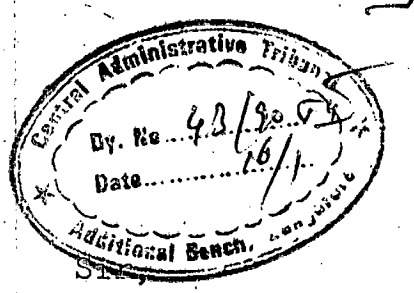
Dated 14-12-89

From: The Additional Registrar
Supreme Court of India.

To

The Registrar
Central Administrative Tribunal
at Bangalore.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 3423/89
(Petition under Article 136 of the Constitution of India,
for Special Leave to Appeal to the Supreme Court from the
Judgment and Order dated 3-11-88 of the High
Court of Central Administrative Tribunal at
Bangalore in Appln. 1786/88.



R. C. Atankar .. Petitioner.

-Versus-

U.O.I. and ors .. Respondents

I am to inform you that the Petition above-mentioned for Special Leave to Appeal to this Court was/~~were~~ filed on behalf of the Petitioner above-named from the Judgment/Order of the Central Administrative Tribunal at Bangalore noted above and that the same was/~~were~~ dismissed/~~disposed of~~ — by this Court on the 13th day of December, 1989

Yours faithfully,

for ~~ADDITIONAL~~ REGISTRAR

15-12-89

AS