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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH
JAIPUR

Date of decision: 19.1.90

O.A. 725 of 1989

Senior Executive Engineer,
Northern Railway, Delhi

Applicant

Mr. J.P.S. Jain }
Mr. S.K. Jain }

Counsel for applicant

VERSUS

Ram Lal & another

Respondents

Mr. Bharat Singh

Counsel for respondent No.1

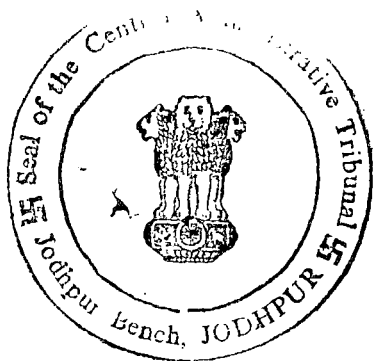
CORAM:

THE HON'BLE MR. KAUSHAL KUMAR
THE HON'BLE MR. S.R. SAGAR

VICE CHAIRMAN
JUDICIAL MEMBER

S.R. SAGAR

This is an application under Section 19 of
the Administrative Tribunals Act, 1985 (for short 'the Act')
for the reliefs extracted below :-



i. That by a writ, order or direction in the nature of certiorari or mandamus the impugned order dated 7.8.89 and the proceedings thereafter be quashed and the respondent No.2 be ordered to allow the petitioner from being represented in the above case through Shri J.P.S.Jain, Advocate or any other advocate of his choice.

ii. That any other relief which this Hon'ble Tribunal may deem fit may also be granted.

2. The applicant is the Senior Executive Engineer, Northern Railway, Shakur Basti, Delhi. The respondents are (1) Shri Ram Lal and (2) Judge, Labour Court (Central) Rajasthan, Jaipur.

3. Briefly stated the facts are that the respondent of The Industrial Disputes Act No.1 had filed a petition under Section 33-C(2) before respondent No.2 on 26.7.81 praying for the computation of

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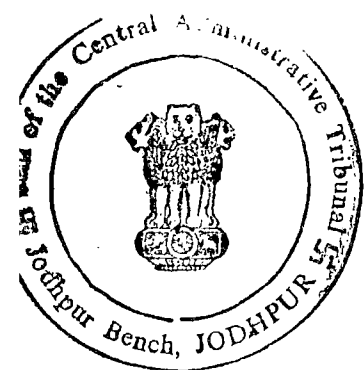
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salary on regular pay scale since 22.6.70 amounting to Rs.10,841.75. The applicant has contested the said petition and has been continuously represented by his counsel Shri P.P.Singh, Advocate, Bikaner in those proceedings before the respondent No.2. As the case is being tried at Jaipur, the applicant engaged another lawyer Shri J.P.S.Jain of Jaipur who filed his appearance on 7.8.89 along with his Vakalatnama. The respondent No.1 filed an objection against the appearance of the applicant's lawyer Shri J.P.S.Jain. It is alleged that the respondent No.2, without affording any opportunity to the applicant to meet the objection, illegally upheld the objection of the respondent No.1 and did not allow the applicant's said lawyer Shri J.P.S.Jain to plead on his behalf vide order dated 7.8.89. Feeling aggrieved by this order of the respondent No.2, the applicant has approached this Tribunal for the reliefs extracted above.

4. On the prayer for interim relief, pending decision of the application, proceedings before the Labour Court were stayed till further orders and notices for admission and prayer for issue of ad-interim direction were issued.

5. The respondent No.1 has contested the application by filing his reply to the ad-interim order. It has been mainly contended that the jurisdiction of the Labour Court under ^{The} Industrial Disputes Act, 1947 (for short 'The I.D.Act') is not barred by Section 28 of the Act and, therefore, the Labour Court has powers and jurisdiction over the matter in dispute. It is further contended that the Tribunal has no jurisdiction to pass any order in respect of interim order passed by the Labour Court under the provisions of The I.D.Act.

6. The case is at admission stage but the



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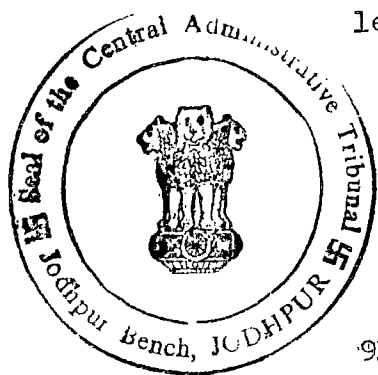
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learned counsel for both the parties have agreed that this should be disposed of finally on merits and for that they are prepared to argue out the case. We have, therefore, heard the arguments so as to dispose of this application finally on merits.

7. The main contention of the respondent is regarding jurisdiction of the Tribunal to entertain the matter in dispute. It has, therefore, to be first seen as to whether this Tribunal has jurisdiction over the matter in dispute? If so, whether any direction, as prayed for by the applicant can be issued to the respondent No.2?

8. The learned counsel for the applicant has vehemently argued that jurisdiction to entertain such dispute was vested in the High Court which was competent to issue proper writs under Articles 226 and 227 of the Constitution of India (hereinafter 'Articles 226 and 227'). Now, after the establishment of the Administrative Tribunals, the jurisdiction exercisable by the High Court, under Articles 226 and 227 vests in the Tribunal and, therefore, any application for directions under those Articles would lie before the Tribunal only. In support of this argument the learned counsel has cited following rulings :-

- i. 1986 A.T.C. 656 (CAT) Principal Bench
Surinder Nath & others Vs. UOI
- ii. 1987 (4) A.T.C. 912
General Manager, Southern Railway, Madras
and others Vs. Presiding Officer,
Central Labour Court (C.A.T. Madras Bench)

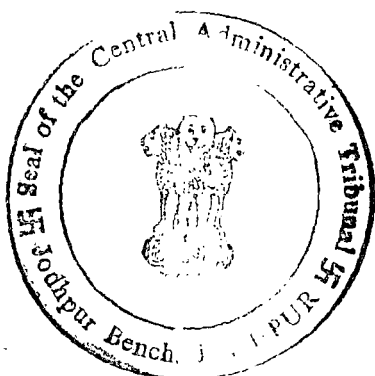


9. The counsel for the respondent No.1 has argued that the Tribunal has no appellate jurisdiction over the Labour Court and, therefore, it has no powers to pass any order with respect to the matter in dispute. He has also argued that even in the cases of appeals, ordinarily the Supreme Court does not interfere with the interim orders unless and until there is manifest injustice. In support

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of his argument he has cited 1981 (3) SCC 61 Jetha Bhai Khatau and Co. Vs. Laxmi Narain Cotton Mills Ltd. and others.

10. There is no express provision corresponding to Articles 226 and 227 under the Act vesting writ jurisdiction of the High Court in this Tribunal. Dealing with the question whether the Administrative Tribunals constituted under the Act are vested or not with the same extraordinary jurisdiction as the High Court to issue progressive writs, a Bench of this Tribunal to which one of us ~~Mr. Kaushal~~ (Mr. Kaushal Kumar) was a party held in Surindra Nath's case (supra) as under :-

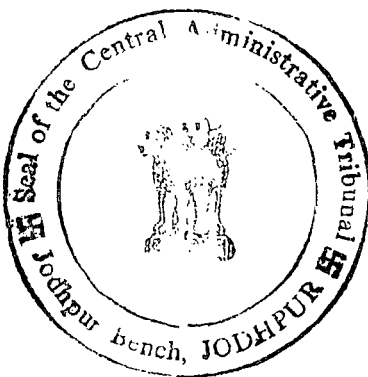


"The question is not whether there is any provision in the Administrative Tribunals Act corresponding to Articles 226 and 227 and whether the Administrative Tribunals constituted under the Act are specifically vested with power to issue writs. The question is whether the jurisdiction, power and authority vested in the High Court immediately before the 'Appointed day' has been vested in the Central Administrative Tribunal under Section 14 of the Act in respect of matters covered by it. Section 14(1) declares that 'the Central Administrative Tribunal shall exercise on and from the appointed day, all the jurisdiction power and authority exercisable immediately before that day by all courts (except the Supreme Court)' in respect of matters specified therein. The jurisdiction, power and authority of the High Court referred to therein undoubtedly includes the jurisdiction vested in it under Articles 226 and 227 of the Constitution. In the absence of any restrictive words, it must be held that the entire jurisdiction of the High Court in respect of the service matters covered by the Administrative Tribunals Act stands transferred to the Tribunals constituted thereunder. It is in respect of these service matters which now fall within the jurisdiction of the Tribunal that the entire jurisdiction, power and authority of the High Court stands excluded under Section 28 of the Act and that power includes the power to issue writs, directions or orders under Articles 226 and 227. In vesting the jurisdiction, power and authority in the Tribunal under Sections 14, 15 and 16 and in divesting the High Court and other courts except the Supreme Court, of their jurisdiction, power and authority under Section 28, the Parliament advisedly omitted

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to specify whether it was in relation to suits or other proceedings. It is necessary to note that it is not merely a part but the entire jurisdiction, power and authority exercisable immediately before the Appointed day stands transferred to the Tribunal and divested from the High Courts and the other courts."... (emphasis supplied)

That Bench further held :-



"The Tribunal being vested with the same jurisdiction, power and authority as that of courts and High Courts and the amplitude of its jurisdiction, power and authority in service matters being in no way limited, it can issue, all writs, directions or orders in respect of those matters which the High Court could have issued. The jurisdiction, power and authority of the Tribunal are as wide and extensive as was that of the High Court and other courts except the Supreme Court. In view of the non-obstante clause contained in clause 3 of Article 323-A, it prevails over both Articles 226 and 227 of the Constitution." (emphasis supplied)

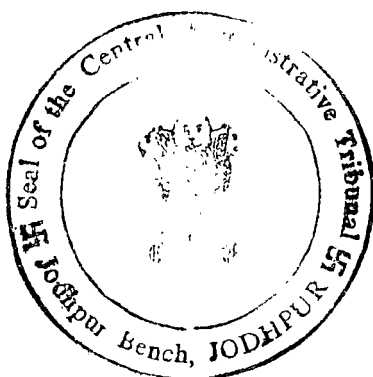
11. In the case of General Manager, Southern Railway, Madras (supra), Madras Bench of the Tribunal observed as under in paras 5 and 6 :-

" (5) In S.P.Sampath Kumar Vs. Union of India AIR 1987 SC 386 : (1987) 2 ATC 82 : (1987) 1 SCC 124 the Supreme Court while considering the question whether the exclusion of the jurisdiction of the High Court in service matters was valid and proper, observed:

As the judicial review of the decisions of the Tribunal by the Supreme Court is left wholly unaffected and thus there is a forum where matters of importance and grave injustice can be brought for determination or rectification, exclusion of the jurisdiction of the High Court does not totally bar judicial review. (AIR head-note)

In Minerva Mills Ltd. Vs. Union of India AIR 1980 SC 1789 the Supreme Court has pointed out that 'effective alternative institutional mechanisms or arrangements for judicial review can be made by Parliament'. Thus it is possible to set up an alternative institution in place of High Court for providing judicial review..... The Tribunal has been contemplated as a substitute and not as supplemental to the High Court in the scheme of administration of justice. (emphasis supplied). To provide the Tribunal as an additional forum from where parties could go to the High Court would certainly have been a retrograde step considering the situation

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and circumstances to meet which the innovation has been brought about. Thus barring of the jurisdiction of the High Court can indeed not be a valid ground of attack. (SCC pp.138-39, ATC pp.96-97, para 16)"

(6) The Supreme Court thus in very emphatic terms declared that the Tribunal is a substitute for High Court and not a supplemental. Having regard to the pronouncement of the Supreme Court, it can no longer be contended that the Tribunal is not a substitute for the High Court. Inasmuch as by omission of Section 2 (b) of the Act the jurisdiction is now vested in the Tribunal to entertain the grievance of persons governed by the Industrial Disputes Act as well, provided they are covered by Section 14 of the Act, we are clearly of the view that the jurisdiction of the High Court to that extent is barred. Hence the High Court could not deal with or dispose of these matters. All such matters, except appeals, stood transferred to this Tribunal under Section 29(1) of the Act."

12.

Consequently, in para 12 it was held :-

"T.A.217 of 1987 is also a petition under Articles 226 and 227 of the Constitution of India which was pending on the appointed date before the High Court. It is directed against an order of the Labour Court made under Section 33-C(2) of the Industrial Disputes Act. For the reasons stated above, this application stood transferred to this Tribunal under Section 29(1) of the Act."

13.

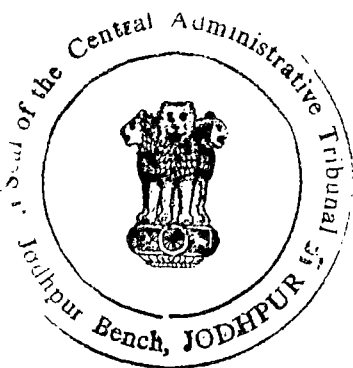
The above will show that it has been consistently held that the Tribunal is a substitute of the High Court and has jurisdiction to exercise the powers thereof in respect of service matters of a person covered by Section 14 of the Act. Following the view, taken in Surinder Nath's case and principle of law laid down by the Constitution Bench of the Supreme Court in Sampath Kumar's case (supra), the Allahabad Bench of the Tribunal vide its decision dated 20.4.88 in S.K.Shishodia Vs. Union of India (Full Bench Judgments of C.A.T. 1989 page 47), held that the Tribunal can entertain the grievance of a person under ^{The} Industrial Disputes Act provided it is a 'service matter' of a person covered by Section 14 of the Act.

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14. It is evident from the above that Section 28 of the Act as it stands now saves the jurisdiction of the Industrial Tribunal/Labour Court or other authority constituted under The Industrial Disputes Act or any corresponding law in force; bars the jurisdiction of the High Court; and vests the Tribunal with the jurisdiction, power and authority exercisable by the High Court to deal with the matters covered by The Industrial Disputes Act provided the same are service matters under Section 14 of the Act. Consequently, petitions under Articles 226/227, which prior to coming into force of the Act and establishment of the Tribunal could be filed in the High Court against the orders of the Labour Court would be filed before the Tribunal in the shape of an application under Section 19 of the Act.

15. For a proper appreciation of the matter in dispute, and to see as to whether it is a service matter, Section 14 of the Act is reproduced below :-



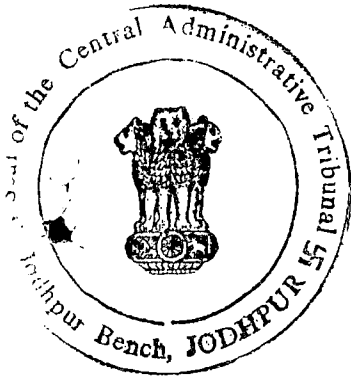
"Jurisdiction, powers and authority of the Central Administrative Tribunal - (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all 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 services, 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 to in clause (c)) appointed to any defence services or a post connected with defence,

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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 controlled 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."

16. Admittedly the respondent No.1 had filed a petition under Section 33-C(2) of The I.D.Act before the respondent No.2 praying for the computation of salary on regular pay scale since 22.6.70 amounting to Rs.10,841.75. The proceedings related to service matter of the respondent No.1 - a railway servant. Undisputedly service matter of the respondent No.1 falls within the purview of Section 14 of the Act extracted above. Admittedly the applicant was authorised to be represented by a legal practitioner Shri P.P.Singh in the said proceedings before the respondent No.2. During pendency of the said proceedings, the applicant had, however, engaged another legal practitioner Shri J.P.S.Jain in place of Shri P.P.Singh. On the objection of the respondent No.1, Shri J.P.S.Jain was not allowed to represent the applicant in those proceedings by the respondent No.2 vide the impugned order dated 7.8.89. Thus dispute arose on the question of engagement of another lawyer in place of the earlier one in the proceedings before the respondent No.2.

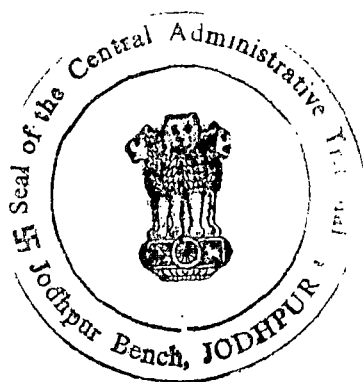
17. It may be stated that any act done or steps taken for the progress of a proceeding shall be deemed to be the part of that proceeding. The engagement of a lawyer by a party or his representation through some lawyer in the

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proceedings before the Labour Court in a service matter, which is undoubtedly for the progress of the proceedings, is part of the said proceedings. Thus the matter in dispute falls within the purview of Section 14 of the Act.

18. In respect of the right of a party to appear or to defend, it has been held by the Bombay High Court in Vazirboo Vs. M/s Keshavlal and another (AIR 1970 Bombay 242):

"A statute altering procedure is ordinarily retrospective. However, a statute cannot affect retrospectively the substantive right vested in a party at the time of institution of suit unless the Legislature has made it retrospective either expressly or by necessary intendment....The right to appear in and defend the suit cannot, therefore, be said to be merely a procedural right. It is a substantive right which vests in the defendant at the institution of the suit against him. The right thus conferred on the defendant can no doubt be restricted or controlled by legislation but in order to have that effect the legislation must say so expressly or by necessary intendment..."



19. Admittedly proceedings under Section 33-C(2) of The I.D.Act are pending before the respondent No.2. Right of the parties to defend through a legal practitioner in the said proceedings has been expressly denied by Section 36(3) of The I.D.Act extracted below :-

"No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court."

20. It will be seen from the above that a party to the proceedings before the Labour Court cannot claim representation through a legal practitioner as of right. That right has been expressly denied to him by the provision extracted above.

21. Section 36(4) of The I.D.Act which is extracted below will show that the applicant, if he wishes to do so, is provided of an opportunity to acquire a right to be represented

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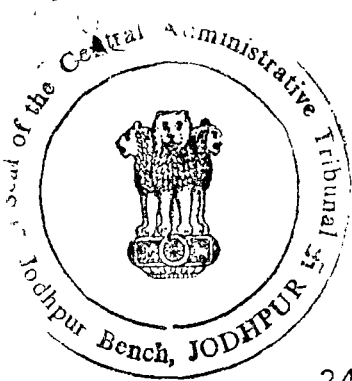
by a legal practitioner in the proceedings before the Labour Court :-

"In any proceeding (before a Labour Court, Tribunal or National Tribunal), a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and (with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be)."

22. Admittedly the applicant had already obtained a right to be represented by a legal practitioner under Section 36(4). After this right has been acquired, the same shall be deemed to be the substantive right of a party to be represented in a proceeding before the Labour Court by a legal practitioner. The question arises as to whether this right can be taken away by any subsequent order or the applicant would be required to apply afresh to acquire the same right again to substitute the legal practitioner already engaged.

23. In connection with the interpretation of the statutory rule or any provision of law, Philips India Ltd. Vs. Labour Court, Madras and others (1985 SCC (L&S) 594) may be referred. The Supreme Court observed that :-

"The statute must be read as a whole. This general rule of construction, which is called ex visceribus actus is applicable to all statutes alike and is so firmly established that it is also styled as 'elementary rule'. The only recognised exception to this well-laid principle is that it cannot be called in aid to alter the meaning of what is of itself clear and explicit."



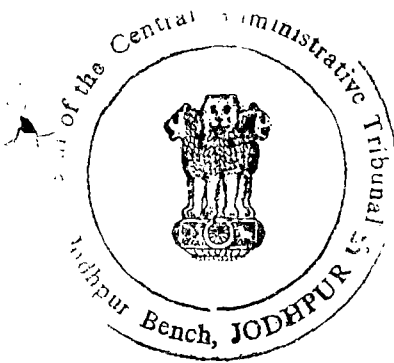
24. The words incorporated in Section 36(4) extracted above are quite clear. A party acquires a right to be represented by a legal practitioner in the proceedings before a Labour Court with the consent of the other parties to the proceedings and with the leave of the Court. There is no provision in The I.D. Act so as to authorise a party to the proceeding or the Labour Court itself so as to withdraw the

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consent once given under Section 36(4). This literal interpretation of Section 36(4) is not in any way against the intention of the legislature and the same is in wider interest of the general public.

25. The applicant had acquired a substantive right of being represented by a legal practitioner in the proceedings before the respondent No.2. The consent of the other parties or the leave of the Court as contemplated by Section 36(4) of The I.D.Act was in respect of the right of the applicant to be represented through a legal practitioner and cannot be meant for representation through a particular legal practitioner. The legal practitioner engaged by the applicant to be represented in the proceedings before the respondent No.2 had therefore right to represent the applicant in those proceedings. In this connection in Calicut Co-operative Milk Supply Union Vs. Calicut Co-operative Milk Supply Workers' Union and another (1986 LAB.I.C. 1681), the Kerala High Court observed that :-



"Section 36(4) does not prescribe that the consent must be given in a particular manner or in a particular form. If that be so, the consent of a party which is the basis for the grant of leave to the other party for being represented by a lawyer in a proceeding under the I.D.Act, can be inferred from the surrounding circumstances as also the conduct of the consenting party. Consent can be implied. The Section does not insist upon a written consent. Consent once given cannot be revoked at a later stage because there is no provision in the I.D.Act enabling such withdrawal or revocation. To put it pithily the consent once given by a party, entitling the other party to be represented in the proceeding, by a lawyer would enure to his benefit till the proceeding is finally disposed of."

26. As a result of the above, we are of the opinion that the Labour Court committed grave error of law in not allowing the applicant to be represented by another legal practitioner. It has resulted in manifest injustice to the

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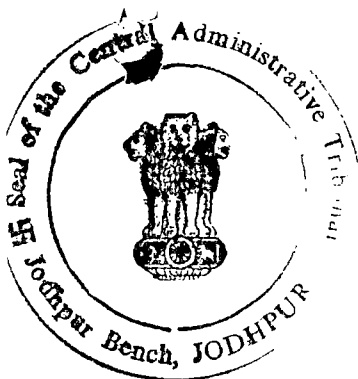
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applicant who has been deprived of his substantive right to defend himself through a legal practitioner of his choice.

27. We, therefore, hold that the impugned order dated 7.8.89 not allowing the applicant to be represented in the proceedings before the Labour Court through the legal practitioner is arbitrary, illegal and against the principles of natural justice.

28. In the interest of justice, therefore, the application is allowed, the impugned order is quashed and it is hereby directed that the applicant shall be allowed to be represented in the proceeding before the Labour Court by a legal practitioner of his choice. No order as to costs.



(S.R.Sagar)
Judl. Member

(Kaushal Kumar)
Vice Chairman