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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.375/91

Pandurang Dattu Dhure

.. Applicant

-versus-

Collector,
Central Excise & Customs,
Pune.

.. Respondents

Coram: Hon'ble Shri M.R.Kolhatkar,
Member(A)

Appearances:

1. Mr.V.B.Rairkar
Counsel for the
Applicant.
2. Mr.A.I.Bhatkar
Counsel for the
Respondents.

JUDGMENT:

Date: 27-4-94

Per M.R.Kolhatkar, Member(A)

1 The applicant joined Central Excise and Customs Department as Sub-Inspector on 26-6-1962 and promoted as Inspector in the scale of Rs.425-15-500-EB-15-560-20-700-EB-25-800. The applicant was informed by the Asstt. Collector, Head Quarters by his letter dtd. 26-5-79 that he was not found fit to cross Efficiency Bar stage at Rs.500/- due on 1-8-78. Subsequently he was allowed to cross E.B. from 1-8-81 i.e. after three years. The increment was sanctioned raising his pay from Rs.500/- to Rs.515/- and thereafter he was granted regular increments. The contention of the applicant is that withholding the Efficiency Bar is not a penalty and when he was allowed to cross E.B. at Rs.500/- on 1-8-81 his pay should have been fixed at Rs.560/- w.e.f. 1-8-81 including the increments which were not allowed

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to him because of his hold up at the E.B. Relying on the ratio of the case of State of Punjab vs. Diwan Chunilal, AIR 1970 SC 2086, the applicant claims that promotion should not have been negatived on the ground of withholding crossing of EB, especially in the absence of express order of appropriate authority and that the power of withholding an officer for crossing of E.B. has been misused. The reliefs claimed by the applicant are that the order of Chief Accounts Officer 8-8-90 intimating him that the Board has rejected his application should be quashed and set aside and the arrears on account of difference of pay w.e.f. the date of withholding crossing of EB should be paid to him.

2. In the written statement the respondents have stated that since the DPC did not find him fit to cross E.B. w.e.f. 1.8.78 he was held up. When the DPC found him fit to cross E.B. on 1.8.81 he was allowed to cross E.B. The question of fixation of his pay w.e.f. 1.8.78 till 1.8.81 does not arise. The increments were granted to him w.e.f. 1.8.81 raising his pay to Rs.515/- and subsequently he was allowed to draw the increments regularly along with all admissible allowances. The respondent^{has} also enclosed at Ex.'B' order dt. 24-4-90 from the Central Board of Excise & Customs conveying the rejection of the request of the applicant for grant of

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benefit of increments to the applicant.

3. The respondents have also stated that the case is fully covered by FR 25. FR 25 reads as below :

"F.R. 25: Where an efficiency bar is prescribed in a time-scale, the increment next above the bar shall not be given to a Government servant without the specific sanction of the authority empowered to withhold increments under Rule 24 or the relevant disciplinary rules applicable to the Government servant or of any other authority whom the President may, by general or special order, authorise in this behalf."

4. In this particular case it is noticed that the competent authority informed the applicant by letter dated 26.5.1979 that he was not found fit to cross E.B. at Rs. 500/- due on 1.8.1978. Subsequently he was allowed to cross E.B. at the stage of Rs.500/- w.e.f. 1.8.1981 in accordance with Collector, Central Excise and Custom's letter dated 12.9.1981. The action taken by the competent authority was in accordance with FR 25. So far as the case law relied upon by the applicant is concerned that case law does not apply. The case of the applicant is that because of his being held up at the E.B. his juniors started getting more pay than him which however appears to be the natural consequence of the hold-up.

5. So far as the "Chunilal case" decided by the Hon'ble Supreme Court is concerned, the observations in that case are made in the context of a Departmental enquiry against a Police Sub - Inspector which was

based on adverse entries in the C.R.'s of the officer. The officer was allowed to cross the E.B. in December 1944. The High Court had held that reports till 1940 only were favourable to the delinquent. Differing from the High Court the Supreme Court observed in para 14 of the judgment

"In our view reports earlier than 1944 (should) not have been considered at all in as much as he was allowed to cross the E.B. in that year. It is unthinkable that if the authorities took (any) serious view of the charge of dishonesty and inefficiency contained in the CRs of 1941 and 1942 they could have over-looked the same & recommended the case of the officer as one fit for crossing the E.B. in 1944."

6. The applicant also referred to Hira Nand Vs. State of Himachal Pradesh (1981 (2) SLJ 218), which was a case decided by the High Court of Himachal Pradesh and in which the High Court relying on Chunilal case referred to above held that the effect of the adverse entries stood wiped out by the petitioner being allowed to cross the E.B. Neither of these cases helps the Applicant.

7. The application therefore has no merit and we dispose of the same by passing the following order.

O R D E R

Application is dismissed.

No order as to costs.

M. R. Kolhatkar
(M. R. Kolhatkar)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

R.P.No. 124/94 in
Original Application No: 375/91
Transfer Application No:

DATE OF DECISION: 17-11-94

P.D. Dhure Petitioner

 Advocate for the Petitioners

Versus

Collector of Central Excise & Customs, Pune Respondent


Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.R.Kolhatkar, Member (A)

The Hon'ble Shri

1. To be referred to the Reporter or not ? ☒
2. Whether it needs to be circulated to other Benches of the Tribunal ? ☒


(M.R.Kolhatkar)
M(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

R.P.No. 124/94 in O.A. 375/91

P.D. Dhure

.. Applicant

Vs.

Collector of Central
Excise & Customs, Pune

.. Respondents

CORAM : Hon'ble Shri.M.R.Kolhatkar, Member (A)

TRIBUNAL'S ORDER BY CIRCULATION

DT: 17-11-94

{ Per Shri.M.R.Kolhatkar, Member (A) }

This Review Application is in respect of the Tribunal's judgment dated 27.4.1994. The Review Application is filed well after the statutory period prescribed for the same, namely 16.9.1994 on the ground that till the date of filing of this application, he has not received the judgment either from the counsel or from the office of Tribunal. He applied for a certified copy of judgment on 7.9.94 and states that even today he has not received the same.

2. Ignoring the issue of limitation, the main ground urged for review is that Supreme Court in its judgment in O.P.Gupta Vs. Union of India & Ors., (1987 (5) ATC 14) at para 16 held that no decision must be taken which will affect the rights of any person without first giving him an opportunity

of putting forward his case. It is not clear whether the facts of the case are identical and in any case as to why the judgment was not cited before us on the date of hearing. It would be seen from ^{our} ~~the~~ judgment that the applicant had relied on "Chunilal case" decided by the Supreme Court and Hira Nand Vs. State of Himachal Pradesh decided by the High Court of Himachal Pradesh. We had noted both these judgments and held ^{them} to be not applicable.

3. The next ground urged is that not giving benefit of increment notionally would amount to double jeopardy. We had rejected this argument in the judgment, where we had stated that this is not a double jeopardy, but a natural consequence of the hold-up at the E.B stage. We therefore consider that there is no merit in the R.P which we are bound to reject.

4. We, however note that in O.A 569/91 our decision in the instant case was referred to and in its order dated 23.08.1994, on the basis of the submissions made before the Single Bench on that day, the matter was directed to be placed before the Division Bench on the ground that certain provisions to which reference was made in the order were not brought to the notice of this Tribunal when the matter was heard. It is notable that the Division Bench comprising of myself and brother Member Shri.B.S.Hegde, M(J) considered the matter of reference on 22.10.1994 and as there was a

difference of opinion among the members of Division Bench and it was also felt that when there are conflicting ^{judgements} _a difference of opinion among the members of Division Bench, such matter cannot be ^{re} _{is} solved by the Division Bench of the Tribunal, because the decision of the Single Bench can be set aside only by the Supreme Court or can be re-considered only by constituting a larger bench of the Tribunal, we had directed the Registrar on that day to make reference to the Hon'ble Chairman of C.A.T at New Delhi to constitute larger bench comprising of 3 members to decide the issue. The terms of reference are as below :

- (i) Whether the F.R 25 read with note 4 thereunder and other available Government instruments has the effect attributed to it, as in the case of Madhusudan Chowdhury V/s. Union of India (1989) 9 ATC 386 or whether F.R. 25 read with Government of India, Department of Personnel & Training, O.M.No. 29014/1/93-Estt.(A), dated 3rd June 1993 implies that the pay of the Government servant held up at E.B shall normally be fixed immediately above the Efficiency Bar, as held by Bombay Bench in O.A.No. 375/91 (P.D.Dhure's Case, 1994 ATJ 55(2))
- (ii) If so, what should be the decision in the instant case, viz. O.A.No. 569/91, subject to limitation point being decided

5. While therefore rejecting the R.P, we make it clear that the applicant would be at liberty to move us to review our decision if the decision of the full bench ^{as} go[in his favour.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member(A)