

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.R.Kolhatkar)  
M(A)

J\*

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  
Ecise & Customs, Pune

.. Respondents

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

TRIBUNAL'S ORDER BY CIRCULATION

DT: 17-11-94

X Per Shri.M.R.Kolhatkar, Member (A) X

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 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 <sup>judgments of</sup> there are conflicting <sup>judgments of</sup> difference of opinion among the members of Division Bench, such matter <sup>s</sup> cannot be 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 <sup>goes</sup> in his favour.

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