The Maharashtra Administrative Tribunal, Mumbai

Original Application No. 194/2006

District: Dhule

Shri.Harendra Arjun Sawant,
aged adult, Occu.Govt.Service as
Jawan i.e. Constable (Excise)
working in the office of
State Excise Check Post
Palasner, Tq.Shirpur,
Dist.Dhule

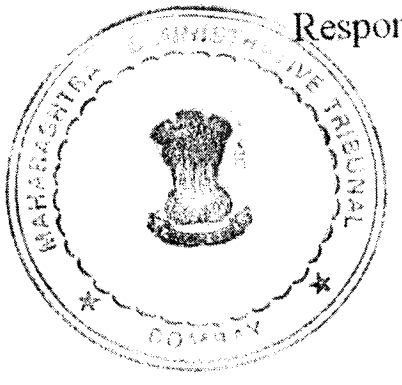
16, Jagdish Nagara,
Moglai, Dhule,
Dist.Dhule

..Applicant

Versus

The Commissioner of State
Excise, M.S. Mumbai having office at
Shahid Bhagatsingh Marg,
Colaba, Mumbai-400 039

Respondent



Shri.A.V.Bandiwadekar, Advocate for the applicant

Shri.N.K.Rajpurohit, Presenting Officer for the Respondents State.

Shri.M.D.Lonkar as Amicus Curie on the point of jurisdiction.

Coram: Justice Shri.A.B.Naik, Chairman
Shri.V.B.Mathankar, Member (A)

Date: For closing for order 26.07.2006.
Date of pronouncement of order 15.09.2006

(Per: Justice Shri.A.B.Naik, Chairman

ORDER

This O.A. was placed before us for motion hearing on 26th July 2006. Having noted the fact that the applicant Shri.Harendra Arjun Sawant is serving as Jawan i.e. Constable (Excise) in the office of State Excise Check Post, Palasner, Tq.Shirpur, Dist.Dhule. A doubt has arisen in our mind as to whether this Bench of Tribunal at Mumbai has a jurisdiction to entertain this application and to grant relief to the applicant, having regard to the relief claimed and averments made in para 4 of the Original Application in our prima facie opinion that this bench has no jurisdiction to entertain this application. In number of cases we have come across in that the applicant/s is/are not residing within the territorial jurisdiction of a particular bench of this Tribunal. The Original Applications are filed at different Benches rather

than at the Bench having jurisdiction. As such an important question is raised by us. We requested S/Shri Bandiwadekar, Lonkar, Learned Counsels to address us on the question of jurisdiction. The Learned Counsels readily accepted our request and made elaborate submissions, we appreciate the cooperation extended by S/Shri.Bandewadekar, Lonkar, Learned Advocates and Shri.Rajpurohit, Learned Presenting Officer

2. In the present application the applicant, who is admittedly posted at Dhule has made the Commissioner of State excise, Maharashtra State, Mumbai having office at Old Custom House, Mumbai as the respondent. Shri.Bandewadekar, Learned Counsel appearing for the applicant contended that as the respondent's office is situated within territorial jurisdiction of this Tribunal, the applicant being justified in lodging this O.A. at the Principal bench of this Tribunal even though the applicant may be residing at Dhule which comes within the territorial jurisdiction of Bench of this Tribunal at Aurangabad. Shri.Bandiwadekar submitted that cause of action for filing this application arose within jurisdiction of this bench as the respondent i.e. Commissioner of State Excise denied promotion to the post of Sub Inspector of State Excise to the applicant, but junior officers to him in his cadre have been promoted and the order to that effect came to be issued at Mumbai. Therefore, he submitted that the cause of action arose within the territorial jurisdiction of this Bench of this Tribunal, more so when

respondent has its office within the territorial jurisdiction of this Bench and this Bench having jurisdiction to entertain the application and as such the applicant is justified in lodging original application at this Bench.

3. Shri.Lonkar and Shri.Rajpurohit submitted that admittedly the applicant is serving at present in the office which is situated within the territorial jurisdiction of the Aurangabad Bench though the complaint about denial of promotion and relief to that extent has been sought in this application but the applicant has not shown or disclosed their names who are the juniors those were promoted. They took us to the various applications submitted by the applicant to the authorities and they pointed out that the applicant was all along working in Ahmadnagar District and presently working at Dhule. Both these places comes within the territorial jurisdiction of the bench of this Tribunal at Aurangabad, thus the applicants should have filed the O.A. at Aurangabad Bench.

4. All the Counsels took us through the rules framed under sub section (1) r/w clause (d) (e) and (f) of sub section (2) of section 35 of the Administrative Tribunals Act, 1985 hereinafter referred to as Act and the notifications issued from time to time under the Act. We will consider these provisions at appropriate stage. In addition to relying on the statutory rules the notifications etc. Counsels also relied on the judgments of the Apex Court, High

Court and the Tribunal to substantiate their respective contentions.

5. Before appreciating the contention we will look how this tribunal came to be established. By Constitution 42nd amendment Act 1976 which came into effect from 3rd of January 1977 Part 15-A came to be inserted in the Constitution of India and Article 323-A came to be added in the Constitution whereby enabling the Parliament by law to provide for adjudication or trial by the Administrative Tribunal, of dispute and complaints with respect to the service matters of the persons connected with Union or State Service. Pursuant to that amendment in the Constitution of India and the power conferred by virtue of Article 323-A of the Constitution the parliament passed the Act called the Administrative Tribunals Act, 1985, the act provides for establishment of Central and State Tribunals and its Benches. Apart from establishment of the Tribunal and its Benches, it also provides for composition of Tribunal and the Benches thereof, qualification for appointment of Chairman, Vice Chairman and Members, their service conditions, term of office and the powers of Chairman, Vice Chairman and Members, staff etc., Section 14 of the Act deals with jurisdiction powers and authorities of Central Tribunal and Section 15 deals with jurisdiction, power and authorities of the State Administrative Tribunal. Section 18 deals with distribution of business amongst the Benches. Chapter-IV

deals with the procedural part i.e. from Section 19 to 27. Section 19 provides for filing an application by persons aggrieved by an order pertaining to any matter within the jurisdiction of the Tribunal. Section 22 deals with procedure and powers of Tribunal. Section 35 of the Act permits the Central Government to make rules to carry out the provisions of the Act under the power conferred by this Section the Central Government has framed the rules regarding the procedure of the Tribunal called as the Maharashtra Administrative Tribunal (Procedure) Rules 1988. Rule 6 of the Rules is material for our purpose. Apart from Rule 6, Section 4, 5 and 18 are also relevant for considering a question of jurisdiction of the Tribunal and its benches to which we will refer now.

6. The Government of India issued a notification under Section 5 of the Act whereby this Tribunal came to be established on 8th July 1991. Initially the Tribunal has its principal seat in Mumbai only, having jurisdiction over entire Maharashtra State. Under the initial notification the permanent benches of this Tribunal at Nagpur and Aurangabad were not established or constituted nonetheless this Tribunal had its Circuit Benches at those two places. The need was felt to have permanent bench at Nagpur and Aurangabad as the High Court of Judicature of Bombay has its Benches. The Administrative Tribunals Act having passed by the Parliament by which the Tribunals were established which were

the substitutes to the High Court in the State. Thus noticing this aspect as it was necessary to have the permanent benches of this Tribunal at Nagpur and Aurangabad, where the High Court of Judicature, Bombay has its Benches, the Government of Maharashtra, Law and Judiciary Department in exercise of the powers conferred by Sub Section 8 of Section 5 of the Act specifies Nagpur and Aurangabad as places where the Benches of the Maharashtra Administrative Tribunal shall ordinarily sit with effect from 30th March 1992.

7. Having issued notification referred supra the Government of Maharashtra in exercise of its powers conferred on it by Sub Section (1) of Section 18 of the Act, 1985 directed that each bench of the Maharashtra Administrative Tribunal shall exercise jurisdiction, powers and authority in all matters under the said Act in the local areas, respectively, specified so in notification in its schedule, which specify the jurisdiction of each benches of this Tribunal in the schedule, which is as under:-

Schedule

Serial Number	Bench	Jurisdiction etc. of the Bench
1.	Principal Bench	Konkan Revenue Division, Nashik Revenue Division (except Ahmednagar and Jalgaon District) and Pune Revenue Division.
2.	Nagpur Bench	Nagpur Revenue Division and

		Amravati Revenue Division
3.	Aurangabad Bench	Aurangabad Revenue Division and Ahmednagar and Jalgaon Districts of Nashik Revenue Division

Thus by the jurisdiction of each Benches stand define and each bench get jurisdiction to entertain the applications of whose cause of action accrued within their respective jurisdiction.

8. The idea of having benches of the High Court or the Tribunal is to give easy access to the needy litigants. Looking to the background and the history behind the amendment in the Constitution by adding chapter 15-A and Article 323-A which authorize the Parliament to pass an Act to establish the Tribunals as it was noted that huge pendency of service matters in the various High Court in the country resulted in not giving complete justice to the litigants at the earliest. The historical background and the cause for enacting and amending the Constitution has been succinctly referred by the Apex Court in case of L.Chandrakumar Versus Union of India and others reported in 1997 (3) S.C.C. page 261. Thus it can be said that by having the Benches either of the High Court or of the Tribunal at different places in the different State give relief of getting speedy justice to the needy people. All the Courts/Tribunals subsist for the convenience of the litigants. That is the main object of having the Benches of this Tribunal

where the Benches of High Court are situated. The formation of Maharashtra state has historical background. Prior to formation of bilingual state this state was called as Bombay State under the States Reorganization Act, 1956. The then Bombay State was reorganized and the area forming part of earst while CP BERAR and Hyderabad were included in the Bombay State. Then in 1960, the Bombay State was bifurcated and two new states i.e. Maharashtra and Gujarat was framed. The Maharashtra consists of Vidarbha and Marathwada which were not the part of Bombay State prior to 1956 and on formation of Maharashtra State the then High Court, Nagpur became bench of Bombay High Court and in 1981 a Bench of High Court was established at Aurangabad. As such on establishment of this Tribunal under the Act the permanent benches at Nagpur and Aurangabad were established. On this backdrop of historical and statutory provsiions notification came to be issued by the Government referred supra.

9. Section 18 of the Act deals with distribution of business amongst the Benches of the Tribunal. Though the word 'business' is used that word has to be constituted to mean and referred to as the "jurisdiction" of Benches. Section 18 Sub Section (1) empowers the Government to make a provision to the distribution of the business of the Tribunal and having regard to these provisions the State Government has exercised its powers and issued the said notification specifying the local areas falling

within the jurisdiction of the Bench of this Tribunal. Jurisdiction of the Court or Tribunal has to be conferred only by the law of land and can be exercised by that court/Tribunal accordingly. The jurisdiction can be exercised only when provided for by either in the Constitution or by the law made by the Legislature. The legislature have permitted the State Government by enacting Section 18 (2) to specify the jurisdiction of the Benches of this Tribunal. The jurisdiction is not attracted by operation or creation of fortuitous circumstances such as in the present case by the reason that respondent having the office at Mumbai and to allow the assumption of jurisdiction by Principal Bench of this Tribunal. in such circumstances will only result in encouraging Forum shopping which should be curbed and not encouraged.

10. In the year 1992 district Dhule was not specified as local area falling within the jurisdiction of the Aurangabad Bench. Dhule district was attached or brought under the jurisdiction of the High Court Bench at Aurangabad in 1996 and to meet that situation, therefore, further notification was issued to bring Dhule District within territorial jurisdiction of the Aurangabad Bench. of this Tribunal on 19th June 1996. Thus in our opinion as the applicant is presently posted at Dhule he has to approach the Bench of this Tribunal at Aurangabad and not at Mumbai.

11. Shri.Bandiwadekar contended that having regard to rule 6 of the Procedure Rules 1988 which provides for filing of original application. Thus as per that provision the applicant has approached Mumbai Bench. He further submitted that if any one of the three requirement referred to in the Rules is fulfilled then the applicant or for that matter the litigant can file the application at a particular Bench. To consider the validity of this submission let us take a look at Rule 6, which reads thus:

"Rule 6: The application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction: -

(i) the applicant is posted for the time being, or

(ii) the cause of action has arisen, or

(iii) the respondent or any of the respondents against whom relief is sought, ordinarily resides

Provided that the application may be filed with the Registrars of the Principal Bench and subject to Section 25 such application may be transmitted to be heard and disposed of by the Bench which has jurisdiction over the matter"

12. Shri.Bandiwadekar contended that the cause of action for filing application arose within the territorial jurisdiction of Principal Bench of this Tribunal. At this stage Shree Bandiwadekar, Learned Advocate referred to the averment made in the application at para 4, which relates to averment qua jurisdiction. Para 4 reads thus:

"4. Jurisdiction of the Tribunal:-

> "The petitioner declares that the subject matter of the order against which he wants redressal is within the jurisdiction of this Tribunal. The petitioner states that both the petitioner and the Respondents are working for gain and are also residing within the jurisdiction of this Hon. Tribunal and therefore, this Hon. Tribunal has jurisdiction to try and entertain this petition".

By reading this para one aspect is incorrectly referred (may be by inadvertence) i.e. both the applicant and the respondents are also residing within jurisdiction. But in our judgment this averment fell short to assert that this bench has jurisdiction to entertain the application, more about it later on. According to Shree Bandiwadekar, Learned Advocate Condition No. (ii) and (iii) being fulfilled moreover the cause of action i.e. rejection of

promotion accrued on account of refusal by respondents who admittedly has the offices at Mumbai. As out of three conditions two conditions of Rule 6 are fulfilled. Therefore, he submitted that this Bench can entertain this application as it has jurisdiction over the subject matter. In other words he submitted this being principle bench it has inherent jurisdiction as the present case is not that of lack of inherent jurisdiction, thus even though for the sake of argument it is considered that posting of the applicant is decisive one still this bench being principal bench, can entertain this application.

13. Shri.Bandiwadekar in support of his contention relied on a judgment of this Tribunal in O.A. NO. 596/2001 (Shri.Balaji Narayan Rao Waghmare Versus State of Maharashtra and others) decided by the then Chairman Justice Shri.S.D.Pandit on 20th July 2001 and the judgment of the Central Administrative Tribunal in case of M.K.Shah Versus Union of India and others reported in 1991 (7) Service Law Reporter page 456 and the judgment of the Apex Court in case of Union of India and others Versus Oswal Woollen Mills Ltd., and Others reported in 1984 (2) S.C.C. page 646.

14. Sarvashri Lonkar and Rajpurohit have joined the issue by contending the word 'or' used at the end of each clause has to be read as 'and' having regard to the subject matter, they contended

that when this Tribunal had more than one Bench the rule has to be read in such a way that the purpose of having the benches of this Tribunal is not frustrated. They contended that if word 'or' is read as suggested by the Learned Counsel for the applicant it will lead to a situation where the litigant government servant will go on filing original application to a Bench of his choice and that situation has to be avoided. They contended that the purpose of having the benches of this Tribunal has a definite purpose i.e. 1) easy access to a litigant i.e. government servant, ii) to avoid congestion of the maters at particular bench iii) to have speedy disposal. Thus if one read clause (i) of Rule 6 which indicate that the applicant to lodge or file an application to a Bench having territorial jurisdiction where he is posted i.e. nearness of his posting. Thus as the applicant is posted at Dhule presently he should have filed this application at Aurangabad Bench. They contended that looking to the clauses i.e. (i), (ii), (iii) of Rule 6 although separated by the word 'or' has to be read conjunctively and it has to be read on the background of Section 18 (1) which permits the State Government to issue notification as to specify or demarcate the jurisdiction of each of the benches of the Tribunal and that aspect has to be adhered to. Thus accepting the rival contentions whether word 'or' is to be read as 'and' we may look to the principles of interpretation of statute. Basic rule of interpretation is to ascertain intention of the legislature. Apparently the intention of the legislature to have a

Administrative Tribunals as a substitute of the High Court, when in a particular State the High Court has its Bench then the Tribunal must also have its bench where the High Court benches are situated. For this matter there may not be any dispute. Thus only dispute would be whether word 'or' can be used conjunctively or disconjunctively. This of course is depending upon the context, because 'or' does not generally mean 'and' or vice versa. Then we have to see the context at the cost of repetition we say that Rule 6 of the Rules deals with filing of the application and the 3 clauses (i) (ii) (iii) say about jurisdiction i.e. i) applicants posting (ii) cause of action (iii) Respondents residence, as such if we accept the contention of Shree Bandiwadekar then in every application the respondents being State of Maharashtra and the other offices which are situated in Mumbai itself then all applications will have to be filed in Principal Bench of this Tribunal at Mumbai and other two benches of this Tribunal will be left with no work and this bench will be flooded with applications that will frustrate the very purpose of having benches of this Tribunal. Thus we are against accepting the contention of Shree Bandiwadekar and we will prefer to accept the contention of S/s Lonkar and Rajpurohit.

15. As this application is filed under Section 19 of the Act, we have to consider the question of jurisdiction of Principal Bench of this Tribunal vis-à-vis the Benches at Nagpur and Aurangabad.

16, The Government has issued notification in exercise of its powers conferred by Sub section 1 of Section 18 by demarcating and specifying the areas falling within the territorial jurisdiction of the Benches of this Tribunal. Thus the territorial jurisdiction is specified by that notification. It is trait of Civil jurisprudence that the jurisdiction of the court or Tribunal is to be vested by the legislation and on conferring such jurisdiction on the judicial Fora that For only can entertain and decide the lis. The parties even by consent cannot confer a jurisdiction on a particular Fora of their choice or convenience which has no jurisdiction to entertain the lis. The jurisdiction has been conferred by law i.e. notification issued under Sec. 18 (1) of the Act on each benches of this Tribunal. Thus in our judgment when in exercise of the statutory powers the State Government issued a notification distributing the business amongst the three Benches of this Tribunal in our opinion the applicant can not choose a particular Forum (Bench) of his choice only by contending that the office of the respondent is situated within the territorial jurisdiction of this Bench. Thus by reading all the three clauses in proper perspective, as such the applicant is not justified in filing this O.A. before this Bench.

The provisions of Section 19 deals with filing of the application to the Tribunal having jurisdiction. That means to the Bench of a Tribunal, which has a jurisdiction. The expression cause of action used in clause (ii) of Rule (6) of the rule means bundle of facts which taken with the law applicable to them gives the applicant

the right to relief against the respondent. In the present case what is the claim or grievance put forth by the applicant being that his claim for promotion to higher post is denied to him coupled with this fact and in particular the applicant is posted in the office of State Excise, Dhule being indicative of the fact that the entire cause of action in the present case has occurred at Dhule and in Mumbai merely issuing or signing of an order by the respondent having its office in Mumbai is not sufficient for the applicant to say that a part of the cause of action (i.e. issuing order) accrued or arose within the territorial jurisdiction of this Bench. This argument is also not available as the rule makers have used the terminology, "The cause of action has arise' as against the terminology used in different enactment for example in Article 226 (2) of the Constitution of India where it is stated i.e. "by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part" is used and in code of civil procedure also when the suit has to be filed in connection with civil right same terminology is used even near home, the rules framed by the Central Government in relation to Central Administrative Tribunals same terminology as used in Article 226 (2) or C.P.C is used, but the same is not used in the rules framed in respect of this Bench of the Tribunal. Thus in case at hand no cause of action or part of it has arose within the territorial jurisdiction of this Tribunal. Thus we hold that the present application has to be lodged at the bench of this Tribunal

at Aurangabad as the applicant is posted at Dhule office. On this backdrop what is stated about the cause of action as indicated in the application needs to be located. We have reproduced clause 4 of the Original Application, wherein the applicant has referred to the jurisdiction of this Tribunal. What is stated by the applicant is that the petitioner and respondents are working for gain and also residing within the territorial jurisdiction of this Tribunal. In title clause the applicant has given his address, which is at Dhule and not as claimed in para 4 of the application. The claim made by the applicant that his juniors have been promoted to the post of Sub Inspector of Excise overlooking the claim of the applicant no instances or names of the juniors who are promoted not stated. From the documents annexed to the applicant it is evident that the applicant all along is residing (working) within the jurisdiction of the Aurangabad Bench of this Tribunal. At present also he is not residing within the territorial jurisdiction of the Principal Bench. The document at Exb,.'J' is annexed by the applicant to support his claim being a letter issued by the Superintendent, State Excise, Dhule/Nandurbar calling upon the applicant to remain present for physical examination before the Committee on 24th February 2005 in the office of the Superintendent of State Excise, Dhule. If all these circumstances (stated supra) are taken into consideration in right perspective and on the backdrop of what we observed supra it is indicative of the fact that no cause of action arose within the territorial jurisdiction of the principal bench of this Tribunal.

Merely because the office of the Commissioner, State Excise is situated in Mumbai that fact alone cannot permit the applicant to lodge the application at the Registry of this Bench.

17. We now refer to judgments referred to by Shree Bandiwadekar. First we will note the judgment of the Apex Court in Oswal Woollen Mills Ltd., (supra) having considered that judgment in the light of the particular facts and in particular the opening part of the judgment where the Apex Court on the facts of that case made the observations on which Shree Bandiwadekar relied on. In that case on the peculiar situation which were noted by Apex Court that a writ petition was filed in Calcutta High Court while the company who has filed the writ petition has its registered office in the Ludhiana in the State of Punjab and that company has challenged the notification issued by the Union of India published at Delhi, and no cause of action or part of it has arisen within the territorial jurisdiction of Calcutta High Court. Thus accepting the contentions of the appellant Union of India about the challenge to the jurisdiction of Calcutta High Court the Apex Court having regard to relief or writ claimed by the petitioner before the High Court held: -

"Having regard to the fact that the registered office of the Company is at Ludhiana and the principle respondents against whom the primary relief is sought are at New Delhi one would

have expected the Writ Petition to be filed either in the High Court of Punjab and Hariyana or in the Delhi High Court. The writ petitioners however, have chosen the Calcutta High Court as the Forum perhaps because one of the interlocutory reliefs which is sought is in respect of consignment of beef tallow which has arrived at the Calcutta Port." With greatest respect and in our humble opinion, this judgment of the Apex Court is not at all applicable to the point at issue or can be accepted to support the contention of Shree Bandiwadekar, Learned Advocate.

18. As we have to take a judicial notice noted that Mumbai being the State Capital all its principal offices are situated in Mumbai and particularly every rules regulations or order relating to service matters of a government officers issued from the offices situated at Mumbai. Then if clause (ii) and (iii) of rule 6 is to be read as suggested by Shri.Bandewadekar then the very purpose and object of establishment of Benches at Nagpur and Aurangabad will be frustrated and in such an event each and every application is required to be filed with the Registrar this Bench at Mumbai rendering other two benches defunct.

19. Now we consider the judgment of this Tribunal in the O.A. decided by Justice Shri.Pandit, the Chairman, as he then was. Having considered that judgment with respect in our opinion though the Hon'ble Chairman has dealt with similar situation but

what we have noted from the said judgment, unfortunately the attention of the Learned Chairman was not brought to the notifications issued by the Government of Maharashtra under Section 18 (1) of the Act nor there is any discussion about it. Unfortunately it appears from the text of the judgment that the attention of the Learned Chairman was not drawn to these provisions. Thus on this case in our respectful opinion the judgment of this Tribunal in O.A. (supra) cannot be treated as a binding precedent. We accordingly hold that the said judgment being per incuriam in our opinion that judgment relied on by Shri.Bandewadekar is of no help. The other judgments, which are relied on by Shree Bandiwadekar, the Learned Counsel are mainly in respect of writ petitions filed under Article 226 of the Constitution of India. In our humble and respectful opinion the judgment relied on by the Learned Counsel interpreting the scope qua cause of action used in Article 226 (2) of the Constitution of India, as such they can not be applied to the facts of this case since the jurisdiction of this Tribunal is circumscribed by the provisions of the Act the terminology used in Rule 68 rule made Under Section 35 of the Act. Therefore, what is stated regarding the jurisdiction and cause of action with reference to the petitions filed in the High Court under Article 226 of the Constitution of India will not ipso facto applicable to the contention of Shree Bandiwadekar. We have also noted that the Central Government has framed the rules called the Central Administrative Tribunal

Rules also under Section 35 of the Act. Rule 6 of the rules used the same phrase similar to as used in Article 226 (2) of the Constitution of India. Therefore, under Central Administrative Tribunal Rules even if a part of cause of action arose within any of its Benches the party or aggrieved person can file a petition/application in any one of the Benches of that Tribunal. But such is not a situation before us. We have noted that rule 6 which used the phrase 'cause of action' and not as 'part of cause of action' Thus this makes lot of difference. In our opinion therefore having regard to all aspects of law and facts noted by us we can not accept the contention of Shree Bandewadekar, even assuming for a moment that what he contended being correct then it will give a tool in the hand of some litigants to file the proceedings before any bench of their choice and that will be nothing but abuse of process of this Tribunal and may give rise to unnecessary and unwanted suspicion and that may result lowering down the dignity of this Institution. While making these observations we are not attributing any motive or intention to the applicant for filing this application before the principal bench of this Tribunal but we had made these observations to highlight justice delivery system, judicial discipline the purity of it, which must be maintained at any cost. What we have said is also reflected in the judgments of the Apex Court in case of Natural Oil and Gas Commission Versus Utpal Kumar Basu and others reported in 1994 (4) S.C.C. page 711. We may not refer to all the

aspects of the case but observations made by the apex court in para `12, being relevant and material and one has to adhere to it so that filing of petitions/applications at the forum of the choice of litigant be avoided. The apex court observed as under:

> "12. This Court, therefore, held that no part of the cause of action arose within the jurisdiction of the Calcutta High Court. This Court deeply regretted and deprecated the practice prevalent in the High Court of exercising jurisdiction and passing interlocutory orders in matters where it lacked territorial jurisdiction of the Calcutta High Court. This Court deeply regretted and deprecated the practice prevalent in the High Court of exercising jurisdiction and passing interlocutory orders in matters where it lacked territorial jurisdiction. Notwithstanding the strong observations made by this Court in the aforesaid decision and in the earlier decisions referred to therein, we are distressed that the High Court of Calcutta persists in exercising jurisdiction even in cases where no part of the cause of action arose within its territorial jurisdiction. It is indeed a great pity that one of the premier High Courts of the country should appear to have developed a tendency to assume jurisdiction on the sole ground that the petitioner before it resides in or carries on business from a registered office in the State of West Bengal. We feel all the more

pained that nothwithstanding the observations of this Court made time and again some of the learned Judges continue to betray that tendency. Only recently while disposing of appeals arising out of SLP Nos. 10065-66 of 1993, Aligarh Muslim University Versus Vinay Engineering Enterprises (P) limited this Court observed:

> "We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction".

In that case, the contract in question was executed at Aligarh, the construction work was to be carried out at Aligarh, the contracts provided that in the event of dispute the Aligarh court alone will have jurisdiction, the arbitrator was appointed at Aligarh and was to function at Aligarh and yet merely because the respondent was a Calcutta based firm, it instituted proceedings in the Calcutta High Court and the High Court exercised jurisdiction where it had none whatsoever. It must be remembered that the image and prestige of a court depends on how the members of that institution conduct themselves. If an impression gains ground that even incases which fall outside the territorial jurisdiction of the Court, certain members of the Court would be willing to exercise jurisdiction on the plea that some

event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice."

Thus these observations though are made in the context referred to in it, nonetheless if on account of the fact that the offices of respondent is in Mumbai that will not give any advantage to any applicant to file the original application with the registry of this principal bench of this Tribunal, when such applicant is not posted in any of the offices, which comes within the territorial jurisdiction of this Principal Bench.

20 Thus having come to the conclusion that this Bench has no territorial jurisdiction to entertain this application as the applicant admittedly resides/posted within the territorial jurisdiction of Aurangabad Bench. Moreover no cause of action arose within the territorial jurisdiction of this Bench. Thus in our opinion the application should have been filed by the applicant at Aurangabad Bench of this Tribunal.

21. Iinstead of returning the application to the applicant for filing/lodging it before the Aurangabad Bench of this Tribunal and in order to avoid further delay, we direct the Registrar of this bench to transfer this Original Application to the Aurangabad Bench where it will be registered afresh. Thus there will be no question of limitation etc., We further direct the applicant to appear before the Aurangabad Bench of this Tribunal on 10th October 2006, Shree Bandiwadekar, Learned Advocate to inform the date of appearance to the applicant.

22. Before parting we may note one submission advanced by Shri.Bandewadekar, who contended that this Bench being a Principal Bench of the Tribunal having a jurisdiction to entertain the application. That will not be wholly without jurisdiction as this Tribunal has inherent jurisdiction to entertain the applications. We could have appreciated this contention but in view of the notification under Section 18 (1) issued on 14.08.1992 this argument is not available. By issuing such notification the Government of Maharashtra under its authority has carved out the jurisdiction of each Benches of this Tribunal meaning thereby it has demarcated the territorial jurisdiction of all the three Benches of this Tribunal which will have to be abide by. However, there is an exception. We have noted that the Government of Maharashtra has its offices outside the State and the persons

working at that places are appointed by Government of Maharashtra and their services are governed by the Rules made by the Government of Maharashtra under the power conferred on it by proviso to Article 309 of the Constitution of India. Such Government servant for the redressal of their grievance has to file proceeding with the Registrar of Principal bench of this Tribunal at Mumbai.

23. We appreciate the co.operation of Sarvashri Bandiwadekar, Lonkar and Rajpurohit, Learned Counsel who have ably made their submissions by citing several judgments of the apex court where the Apex Court has interpreted the word 'or' as referred in Rule 6 of the rules. That has to be read as 'and'. They also cited the judgments dealing with the jurisdiction of the High Court to issue writ to an authority who are not within territorial jurisdiction of the High Court but it is not necessary for us to analysis or refer to all those judgments, but we will only note those judgments 1) Election Commission of India Versus Saka Venkata Rao. A.I.R 1953 S.C. 210. 2) Hari Vishnu Kamat Versys Ahmad Ishaque, A.I.R. 1955 S.C. 233. 3) M/s Patel Roadways Versus M/s Prasad Travelling Company 1992 AIR SCW 162. It is also not necessary for us also to refer to the judgments of the Central Administrative Tribunal which is relied on by Shree Bandiwadekar reported in (1991) VII SLR 456, in case of Milk Saha Versus Union of India as the Division Bench of Central Administrative Tribunal was

dealing with a case filed before it under the Central Administrative Tribunal (Procedure) Rules, 1987 when the rule used the phrase 'wholly or in part' in Rule 6 of those rules. Such is not the case in hand. Thus this judgment is of no assistance. Order accordingly.

sd/-
(V.B.Mathankar)
Member (A)

sd/-
(A.B.Naik)
Chairman

Date: 15.09.2006
Place: Mumbai
Typed by: P.S.Zadkar