

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 474 OF 1987
~~J.A. No.~~

DATE OF DECISION 4.11.1988

SHRI B.B. SOLANKI Petitioner

MR. B.N. PATEL Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent

MR. M.R. BHATT FOR MR. R.P. BHATT Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.M. JOSHI : JUDICIAL MEMBER

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No*

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Shri B.B.Solanki,
 Incometax Officer,
 Incometax Office,
 Circle III Ward 'G'
 Ahmedabad-9.

.... Petitioner

(Advocate : Mr. B.N.Patel)

Versus

1. Chief Commissioner,
 Administrative & C.I.T.
 Gujarat I, Ahmedabad.

2. Secretary,
 Central Board of Direct Taxes,
 New Delhi.

.... Respondents.

(Advocate : Mr. M.R.Bhatt for
 Mr. R.P.Bhatt)

J U D G M E N T

O.A. No. 474 OF 1987.

Date : 4/11/1988

Per: Hon'ble Mr. P.M.Joshi, Judicial Member.

The petitioner Shri B.B.Solanki, serving as Income Tax Officer at Ahmedabad, has filed this application on 29.9.87 under section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act'). He claims that is entitled to fixation of pay in the grade of Inspector of Income Tax by way of stepping up the pay with effect from 18.7.1973, when the salary of his junior Shri A.H.Parmar was fixed at Rs. 620/-, whereas his pay was fixed at Rs. 485/-. It is alleged that his representation to remove anomaly has been wrongly rejected vide order contained in the letter dated 25/30th August, 1983, passed by the respondent No.1. The petitioner has prayed that the respondents be

directed to step up the pay in the pay scale of Inspector of Income Tax by raising the salary of the petitioner to the level of the salary of Shri A.H.Parmar fixed as on 18.3.1983 by removing anomaly of pay and pay the arrears by re-fixation of his pay and grant all consequential benefits.

2. The respondents-the department of the Central Board of Direct Taxes, in their counter denied the petitioner's assertion and contended inter-alia that the petitioners application is liable to be dismissed on the ground of delay alone. According to them, Shri Parmar, who happens to draw more pay than the petitioner, had the benefit of pay fixation at the lower post of Head-clerk and Supervisor fortuitously. It was further submitted that the case of the petitioner is not covered under the instructions issued by the Central Board of Direct Taxes under their letter No. A/26017/173/79-Ad. IX dated 2-11-81 which provided :

- (a) the compared junior should have been fully qualified for the post of Inspector at the time when the senior is promoted direct as Inspector;
- (b) the junior should have been promoted as Head Clerk in the intervening period; and
- (c) the junior should have been promoted either from the same panel from which the senior has been promoted or from the immediately succeeding select panel.

3. When the matter came up for hearing Mr. B.N.Patel and Mr. M.R.Bhatt for Mr. R.P.Bhatt, the learned counsel for the petitioner and the respondents respectively, are heard. The materials placed on record are also perused and considered.

4. During the course of his arguments Mr. B.N.Patel, while referring to his representation dated 20.5.1982 (Annexure A-I) strenuously urged that when the petitioner

was transferred at Ahmedabad he came to know about the fact that his junior Shri A.H.Parmar, Inspector of Income Tax, was drawing higher pay in the cadre of Inspector of Income Tax and even the respondents authorities having realised the distress on account of the anomaly, when issued the instructions in the year 1981, it can not be said that the petitioner is guilty of any delay. According to Mr. Patel, the petitioner's colleague Shri J.V.Nadiadara, who was similarly situated had moved the High Court by filing a Special Civil Application which on transfer was renumbered as T.A.No. 92/86 came to be decided on 28.7.87 and his grievances has been redressed in terms of the directions issued by this Tribunal. Mr. M.R.Bhatt for Mr. R.P.Bhatt the learned counsel appearing for the respondents reiterated the contentions raised in their counter and in the alternative, submitted that no arrears beyond three years prior to the institution of the suit be allowed as held by the Tribunal in O.A.No. 102/87 decided on 22.4.1988.

5. The following comparative table furnishing the relevant service particulars of the petitioner vis-a-vis Shri A.H.Parmar will be useful to understand the nature of the anomaly as alleged by the petitioner.

B.B.SOLANKI			A.H.PARMAR	
	Date of appointment.	Pay Rs.	Date of appointment	Pay Rs.
L.D.C.	27.7.1953	55	16.7.1958	60
U.D.C.	25.1.1961	135	8.11.'63	140
	(A.N.)			
H.C.	-	-	6.12.'69	210
Supervisor	-	-	12.6.1972	335
Inspector	16.1.1969	220	18.7.1973	380
"	18.7.1973	485	18.7.1973	620
	(In the revised Scale)			

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6. The avenue of promotion to the post of Inspector of Income Tax is in more than one manner. The persons working as U.D.C. on merits and on passing the requisite examination would be eligible for promotion to the post of Inspector of Income Tax i.e. on merits, whereas the person working as UDC ^{first} can/earn his promotion to the post of Head Clerk and thereafter he and later on, as Supervisor/can also be considered eligible for promotion on the basis of seniority. Admittedly, the petitioner secured promotion on 16.1.69 to the post of Inspector of Income Tax on merits by passing a departmental examination in the year 1967. However, his junior Shri Parmar did not appear at the departmental examination. But he was eligible for being considered for promotion to the post of Head Clerk and he was promoted on 6.12.1969 and thereafter as Supervisor Grade II from 12.6.1972 and thereafter Shri Parmar came to be promoted as Inspector on July 18, 1973. Thus, eventhough he was not promoted to the post of Inspector of Income Tax on the basis merit by passing the requisite examination, he earned the benefits of Rule 22(C) of F.R. at different stages and thus when he was promoted to the post of Inspector, his pay was fixed in the revised scale at Rs. 620/- on 18.7.1973 whereas it was fixed at Rs. 485/- in the case of the petitioner on the said scale.

7. It seems that the Government of India, Ministry of Finance, having realised, the anomaly of the aforesaid nature issued the circular dated 12.6.75 wherein it was laid down that in a situation of this kind the pay of the senior should be step up to the

level of junior. Apart from the guidelines laid down in the said circular, the petitioner was entitled to be stepped up to a figure equal to the pay as fixed to the junior officer, as laid down under FR 22- C. In the case of Shri Waman V. Pimpalgaonker V/s. Union of India, in O.A. No. 102/87 decided on 22.4.88, a reference was made to O.M. dated 4.2.66 issued by the Ministry of Finance, laying down the instructions as to the manner in which the anomaly of pay in respect of senior drawing less pay than his junior on promotion as a result of application of FR-22C. The relevant portion thereof is reproduced as follows:-

"10. (a) As a result of application of F.R.22-C. In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely :-

(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre :

(b) The scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(c) The anomaly should be directly as a result of the application of F.R.22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officer in accordance with the above provisions shall be issued under F.R.27. The next increment of the

senior officer will be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of pay."

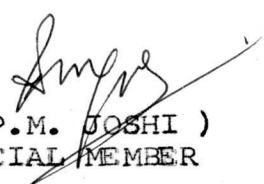
8. In J.B. Nadiadara V/s. Commissioner of Income Tax & Ors. (T.A. No.92/86 decided on 28.7.87 by Division Bench of this Tribunal), it has been held that there is no logic in the disparity between the pay and emoluments of those who are promoted from UDCs to Inspector and those who are promoted from UDCs to Head Clerks or Supervisors and then ^{to} Inspectors. It was further observed that the former have shown better merits at an earlier stage which has enabled them to skip one intermediate stage in the ladder of promotion compared to those who have been first Head Clerks and then Inspectors, although they could have directly competed for promotion as Inspectors and thus could be regarded having lesser merits. It was therefore, held that the rationale of Rule 22 (C) is to provide incentive for and recognise the merits for promotion. Evidently, I have no hesitation in holding that the claim of the petitioner for stepping up of pay on par with his junior Shri A.H. Parmar, merits consideration with effect from 18.7.1973.

9. The question of limitation and delay caused in redressal of his grievance, raised in the case of Pimpalg-aonkar, has been similarly raised in the present case also. It was held in the said case that when the cause of action for the petitioner related to fixation of his pay, wherein his grievance which recurred year after year and thus it is in the nature of a "continuing cause of action". In the matter of claim for arrears of salary it was held that the period of limitation would be that laid down in Article 7

of the Limitation Act, 1963 (see Madhav Laxman Vaikunthe V/s. State of Mysore, 1963 (1) S.C.R. 886). Thus an employee can claim arrears of salary which fell within three years of the date of filing of the suit/application.

10. In view of the aforesaid findings made above, the application succeeds. The action of the respondents in not rectifying the anomaly in the fixation of pay of the petitioner can not be sustained. The respondents are therefore, directed to rectify the anomaly in fixation of pay of the petitioner with effect from 18.7.1973 and relate his pay thereafter in accordance with the rules. The petitioner however is entitled to arrears of salary as a consequence only in respect of that accrued due three years prior to the date of the application i.e., 29.9.1987. The respondents are directed to comply with the aforesaid directions within three months from to-day.

Accordingly, the application stands disposed of with the directions stated above. There will be however no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER