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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 102 OF 1981
~~T.A. No.~~

DATE OF DECISION 22.4.1988

SHRI WAMAN V. PIMPALGAONKER Petitioner

PARTY-IN-PERSON ~~Advocate for the Petitioner(s)~~

Versus

UNION OF INDIA & ORS. Respondents.

M.R. BHATT FOR 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 ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

Shri Waman V. Pimpalgaonker,
Income Tax Officer (Retd.)
Vishnukripa,
3, Sudeep Society,
Behind Zaveranagar
Waghodia Road,
Vadodara - 390 019.

..... Petitioner.

(Party-in-Person)

Versus.

1. Union of India, through
The Chief Commissioner of
Income Tax (Admn.)
Income Tax Office,
Ahmedabad.
2. The Commissioner of
Income Tax,
Gujarat I
Ahmedabad.

..... Respondents.

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

J U D G M E N T

O.A.NO. 102 OF 1987.

Date : 22.4.1988.

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

In this application, filed under section 19 of the Administrative Tribunals Act, 1985, on 10.3.1987, the petitioner Shri Waman V. Pimpalgaonkar (retired Income Tax Officer) of Baroda has challenged the validity of the order dated 11th July 1984 passed by the Chief Commissioner (Adm.) and C.I.T. Gujarat, Ahmedabad. The said order reads as under :-

Sub : Proposal for stepping up of pay
Shri W.V. Pimpalgaonkar with
Shri P.R. Wathare.

Please refer to your letter No. BR.II/Est.201(28)/83-84 dated 28-3-84 on the above noted subject.

The request of Shri W.V. Pimpalgaonkar to verify the records of 1964-65 D.P.C. proceedings cannot be acceded as they are beyond the period of retention. He may be informed accordingly.

The service book of Shri W.V. Pimpalgaonkar and P.R. Wathare are returned herewith. Please acknowledge the receipt.

Sd/-

(C.V. Menon) ITO (HQ Adm.)
for Chief Commissioner (Adm.) and
C.I.T. Gujarat-1, Ahmedabad.

Encl. : Two service Books.

No.BR.II/Est./201(28)/84-85

Office of the I.A.C.
B.R.II, BARODA;
Dated:23-7-1984.

Copy to Shri W.V.Pimpalgaonkar, ITO Cir.II/F, Baroda with reference to his last letter dated 29-2-84.

His service book has been sent to the I.T.O.Cir.II (Adm) Baroda for preparation of pension papers. The service Book of Shri P.R.Wathare, ITO has already been returned to the I.A.C. B.R.I., Baroda.

2. According to the case set up by him, he was promoted from the post of Upper Division Clerk (U.D.C.) to the post of Inspector directly whereas Mr.P.R.Wathare was promoted firstly as Head Clerk and then to the post of Inspector. It was further stated that he was senior to Mr. Wathare in the Income Tax Department as Upper Division Clerk as well as in the cadre of Income Tax Officer, but he was getting less pay than Mr.P.R.Wathare. It is alleged that despite the fact he had made several representations to remove the anomaly in the pay on the basis of FR-22 and to extend the benefit of circular of the Government of India, New Delhi dated 12.6.75, his claim has not been considered till he retired from service as Income Tax Officer from Baroda on 31st January, 1985. He has therefore prayed that the Respondents be directed to extend the benefit of circular dated 12.6.75 and FR on the basis of his service book and set right the anomaly.

3. The following comparative table furnishing the relevant service particulars of the petitioners vis-a-vis Shri P.R. Wathare will be of great assistance in order to ascertain the nature of the anomaly alleged by the petitioner.

contd..... 4/-

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Shri W.V. Pimpalgaonker

- i) Date of joining the Dept. as U.D.C. 13.9.50
- ii) Pay as Head Clerk Nil
- iii) Promoted as Inspector on 10.8.64 Rs. 250/-
- iv) Promoted as Offg. I.T.O. on 11.4.73 @ Rs. 400/-
- v) Revised scale as per pay Commission @ Rs. 650/-
- vi) Pay as Offg. ITO (increment) 1.4.74 Rs. 680/-
- vii) Pay increased due to increment on 1.4.76 @ Rs. 710/-
- viii) Pay increased due to increment on 1.4.76 @ Rs. 775/-
- ix) Pay increased due to increment on 1.4.77 @ Rs. 775/-

Shri P.R. Wathare

- i) Date of joining the Dept. as U.D.C. 12.9.51
- ii) Promoted as HC on 5.5.65 Pay Rs. 260/-
- iii) Promoted as Inspector on 10.11.65 Pay Rs. 270/-
- iv) Promoted as Offg. I.T.O. on 15.11.73 @ Rs. 425/-
- v) Revised scale as per pay Commission @ Rs. 680/-
- vi) Pay as Offg. ITO (increment) 1.11.74 Rs. 710/-
- vii) Pay increased due to increment on 1.11.75 @ Rs. 740/-
- viii) Pay increased due to increment on 1.11.76 @ Rs. 775/-
- ix) Pay increased due to increment on 1.11.77 @ Rs. 810/-

4. The main grievance of the petitioner is that when he was promoted to the post of Inspector on 10.8.64 his pay was fixed at Rs. 250/-; whereas his junior P.R.Wathare when promoted as Inspector on 10.11.65 his pay was fixed at Rs. 270/-. Moreover it is his version that when he was promoted as officiating Income Tax Officer on 11.4.73, his pay was fixed at Rs. 400/- and the same anomaly continued as the pay of Shri Wathare was fixed at Rs. 425/- when he was promoted as officiating I.T.O. According to the petitioner, this anomaly was aggravated when his scale was revised as per recommendation of the Pay Commission when his pay was fixed at Rs. 650/-; whereas it was fixed at Rs. 680/- in the case of Shri P.R. Wathare.

5. On the date of the hearing the Affidavit of the petitioner was allowed to be produced alongwith documents relied upon by him. The respondents have filed their reply resisting the petitioner's claims. Mr. M.R. Bhatt for

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Mr. R.P. Bhatt, the learned counsel for the respondents, contended, at the outset that this application was highly belated and therefore barred by limitation and further this application which in effect sought to enforce a claim arising prior to 1.11.82 was not maintainable. Now as could be seen from the pleadings of the parties the cause of action for the petitioner related to fixation of his pay. It is therefore a grievance which recurred year after year and therefore it is of the nature of a "continuing cause" of action. The contentions canvassed by Mr. Bhatt in this regard, in my view merits no consideration and therefore I overrule the preliminary objection raised by Mr. Bhatt.

6. Dealing with the merits of the petition, it was next contended by Mr. Bhatt that on the crucial date i.e. 1.1.75 earmarked under the circular dated 12.6.75, the petitioner and Shri Wathare were Income Tax Officer. In this regard Mr. Bhatt has pressed in service, the following recommendation of the sub committee accepted by the departmental council reproduced in the circular dated 12.6.1975 :-

The sub-committee in this final report submitted to the Deptt. Council on 7.4.75, recommended as under :-

"If a U.D.C. (A) promoted direct as Inspector draws less pay than his junior (B) who, through qualified for promotion as Inspector is appointed as H.C. in the period intervening between the section (A) for the post of Inspector and the immediately succeeding select panel prepared for the posts of Inspector and gets promoted as Inspector on the basis of the said subsequent select panel or the earlier panel on the basis of which (A) was promoted than the pay of (A) will be stepped up upto the level of the pay of (B) from the date of (B)'s promotion as Inspector.

It was further decided that in past cases the anomaly is to be removed in respect of the persons who were Inspectors as on 1.1.1975 and in whose cases such anomaly existed on that date. Though the stepping up of the pay the senior is to be done from the date of promotion of the junior as Inspector arrears consequent on such stepping up will not be paid for the period prior to 1.1.1975.

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7. While refuting the above contention the petitioner has strenuously urged that he was promoted to the post of Income Tax Officer merely on temporary basis vide office order No. ESTT/38/1/73 dated 23-3-1973 and therefore he was holding substantive post of the Inspector even on the crucial date and therefore the benefit of stepping up of the pay in the case of a senior incumbents can not be denied to him. Even apart from it, it is contended by him that the denial of such a benefit is an act of injustice. It is significant to note that the department has properly considered the financial disadvantage suffered by the Senior qualified U.D.Cs when they get promotion as Inspector direct, whereas their junior while getting promotion, first, as Head Clerk and subsequently as Inspectors draw higher pay than their senior by virtue of having drawn the benefit of FR-2C twice. Having realised, the anomaly the Government of India, Ministry of Finance, in circular dated 12.6.75 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 this decision 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-22C. The Union Ministry of Finance, have in their O.M. dated 4.2.66 laid down instructions as to 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 should be rectified. This O.M. reads 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

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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 scales 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 officers 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. The case of the petitioner clearly falls within the ambit of the instructions quoted above, as conditions (a) to (c) stipulated therein, as a pre-requisite for correction of the anomaly, are duly fulfilled with effect from 10.11.65 when Shri P.R.Wathare was promoted to the post of Inspector when he drew higher pay than the petitioner. This pay came to be further enhanced on account of a second promotion granted to Shri P.R.Wathare to the post of I.T.O. on 15.11.73 and this disparity continued onwards. In J.V. Nadiadra V/s. Commissioner of Income Tax and Ors. (T.A.No. 92/86 decided on 28.7.87) 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 U.D.C's to Inspector and those who are promoted from U.D.C's to Head Clerks and then Inspectors. It was further observed that the former have shown better merit at an earlier stage which has enabled them to skip on intermediate stage in the ladder of promotion compared to those who

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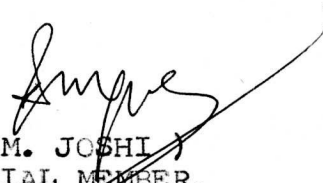
have been first Head Clerks and then Inspectors, although they could have directly competed for promotion as Inspectors, and thus could be regarded having lesser merits. It was therefore held that the rationale of Rule 22(C) is to provide incentive for and recognise the merit for promotion. Evidently, I have no hesitation in holding that the case of the petitioner for stepping up of pay and par with his junior Shri P.R.Wathare, merits consideration with effect from 10.11.1965.

9. The reason assigned by the respondents authorities in rejecting the petitioners' claim are not found well-founded. Even while considering merits in the petitioners' claim it is required to be decided as to what precise relief can be granted to the petitioner. Ofcourse, it has been held that this is a continuing grievance and the preliminary objection of limitation and maintainability of the application raised by Mr. Bhatt has been overruled. However, while considering the petitioners' claim for arrears of salary, the fact that the petitioner has approached very late for redress can not be overlooked. In the case of a claim for arrears of salary the period of limitation would be that laid down in Article 7 of the Limitation Act 1963 (Article 102 of the Indian Limitation Act, 1908) (see Madhav Laxman Vaikunthe V/s. State of Mysore, 1963(1) S.C.R. 886). The word "wages" in this Article, covers salary also; it is intended to cover all claims for wages, pay or salary not expressly provided for in any other Article. Thus an employee can claim arrears of salary which fell within 3 years of the date of filing the suit/application.

10. In view of what has been discussed above, the action of the respondents in not rectifying the anomaly in the fixing pay of the petitioner can not be sustained.

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The respondents are therefore directed to rectify the anomaly in the fixing of pay of the petitioner with effect from 10.11.65 and regulate his pay thereafter in accordance with the instructions contained in the aforesaid O.M. dated 4.2.1966 of the Union Ministry of Finance. The petitioner, however is entitled to arrears of salary as a consequence only in respect of that accrued due 3 years prior to the date of the application. Thus claim prior to 10.3.1984 will be barred by time. The petitioner however will be entitled to claim all pensionary benefit on the pay so fixed in pursuance of the aforesaid direction. The respondents are further directed to comply with the aforesaid directions within 3 months from today. The application therefore stands disposed of with the directions stated above. There will be however no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER.

ttc.