

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 346/92

~~Ex No.~~

DATE OF DECISION 22/9/1993

Shri Baldevbhai Patel Petitioner

Party in person Advocate for the Petitioner(s)

Versus

Union of India & Anr. Respondent

Mr. Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N. B. Patel

: Vice Chairman

The Hon'ble Mr. V. Radhakrishnan

: Administrative Member

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 ?

No.

Shri Baldevbhai Patel,
APMG (Staff)
O/o. The Chief Postmaster General,
Gujarat Circle, Khanpur,
Ahmedabad-380 001.

: Applicant

(Party in Person)

Versus

1. Union of India

Through:
The Director General,
Department of Posts
Ministry of Communications,
Govt. of India,
Parliament Street,
New Delhi-110 001.

2. The Chief Post Master General,
Gujarat Circle,
Khanpur, Ahmedabad-380 001.

: Respondents

(Advocate: Mr. Akil Kureshi)

: J U D G M E N T :

IN

O.A. 346/92

Date: 22/9/1993

Per: Hon'ble Mr. N.B. Patel

: Vice Chairman

The applicant prays for the stepping up of his pay as on 1.4.1989 from Rs.3050/- to Rs.3200/- so as to bring it on par with the pay of his junior Shri K.C. Bhatt, whose pay has been fixed at Rs.3200/- as on 1.4.1989. According to the applicant, the anomaly of his junior's pay having been fixed at Rs.3200/- and his pay at Rs.3050/- as on 1.4.1989, has arisen because of the fixation of the pay of his Junior Shri Bhatt in the post of Group 'B' pursuant to the acceptance of the revised pay scales which

were brought into effect from 1.1.1986.

2. It is not in dispute that the applicant has been senior to Shri K.C.Bhatt all along on all promotion posts starting from the post of APM as indicated from the following table:-

	<u>Applicant</u>	<u>Shri K.C.Bhatt</u>
APM	10.6.64	26.3.65
IPO	16.7.65	4.6.69
HSG II	10.1.78	26.12.80
* ASPOs	16.1.81	10.1.81
HSG I	9.10.84	15.2.89
Group B	27.11.84	27.3.89

(* Promotion of the applicant as well as Shri K.C.Bhatt to the post of ASPOs was by the same order dated 1.1.1981, but the applicant had taken over charge of the post of APOs on 16.1.1981 whereas Shri K.C.Bhatt had taken over charge of the said promotion post six days earlier i.e. on 10.1.1981 and thus, even in the post of ASPOs, Shri Bhatt was not senior to the applicant.)

3. As is clear from the above table, the applicant was certainly senior to Shri Bhatt in Group 'B' post but, in the said post, the pay of Shri Bhatt was fixed at

Rs.3200/- while that of the applicant was fixed at Rs.3050/- and that is why the applicant feels aggrieved and has approached the Tribunal after making two representations to the department which have been rejected by the orders dated 10.10.1991 and 4.2.1992 (Annexures A and A/6). In the process, the applicant has also asked for the quashing and setting aside of the two decisions Annexures A & A/6 whereby his claim for stepping up of his pay has been rejected by the department.

4. Briefly, the applicant's case is that, though he has been senior to Shri Bhatt all along and though he was promoted to HSG-II post on 10.1.1978 and Shri Bhatt was promoted to that post subsequently on 26.12.1980, the pay of Shri Bhatt is fixed at Rs.3200/- as on 1.4.1989 while his pay is fixed at Rs.3050/- on that date in the Group 'B' post and the department has illegally refused to rectify this anomaly. It is pointed out by the applicant that, it was about five years after his promotion to the Group 'B' post that Shri Bhatt was promoted to that post on 27.3.1989 in the scale Rs.2000-3500 ^(revised) / and his pay was fixed at Rs.3200/- w.e.f. 1.4.1989 i.e. the date from

which he had opted for the revised scale.

Thus, according to the applicant, the anomaly has arisen because of the option exercised by Shri Bhatt for fixation in the revised scale w.e.f. 1.4.1989. The applicant was drawing pay of Rs.3050/- w.e.f. 1.11.1988 which continued to be the same ^{on} 1.4.1989 when his junior's pay was fixed at Rs.3200/- in the revised scale for the Group 'B' post. The applicant has pointed out that while he had got promotions prior to the revision of the pay scales, his junior Shri Bhatt had got promotion after the revision of the pay scales and this was also a factor which had resulted in the anomaly of a senior getting less pay than his junior. The applicant has pleaded that this anomaly was required to be removed as per Government of India's order No.8 dated 16.6.1989 under F.R. 22 (c) vide Annexure A-4.

5. The claim made by the applicant is resisted by the respondents on the sole ground that Shri K.C.Bhatt was "erroneously" promoted to the post of HSG II after the issuance of instructions dated 21.3.1979 (Annexure R-1) whereby promotions to the post of HSG II was not to be made from the post of IPO but all the 100%

posts of HSG II were to be made from another category, namely, from the post of LSG, also referred to as the General line posts. In other words, the respondents have pleaded that there was a bar against the promotion to the post of HSG II from the post of IPO w.e.f. 21.3.1979, and yet Shri Bhatt was wrongly promoted to the said post from the post of IPO on 26.12.1980. The respondents say that since Shri Bhatt was promoted to the post of HSG II on 26.12.1980 after the decision dated 21.3.1979, his promotion to the post of HSG II was erroneous and illegal and the fixation of his pay in that post and the fixation of his pay in the next higher post on the basis of his wrong promotion made on 26.12.1980 cannot be relied upon by the applicant for stepping up of his pay so as to bring it on par with the pay of Shri Bhatt. The respondents have contended that as the basis for promotion of Shri K.C.Bhatt was erroneous, the applicant's claim for stepping up of his pay on the basis of such erroneous promotion is baseless. According to the respondents, the applicant's case does not fulfill the requirements of the rule for stepping up of the pay and, hence, the applicant's claim is liable to be rejected. In the reply, it is also pointed out that Shri K.C.Bhatt was promoted to

Group 'B' post w.e.f. 27.3.1989 and his pay under Rule 22-C was to be fixed at the stage of Rs.3050/- but Shri Bhatt opted fixation of his pay in the revised scale in the Grade 'B' post from the date of his next increment in the old cadre (HSG-I) i.e. from 1.4.1989 and hence, his pay which was fixed at Rs.3050/- from 27.3.1989 was fixed at Rs.3200/- w.e.f. 1.4.1989.

6. The sole ground on which the respondents have opposed the applicant's claim is that, the promotion of Shri Bhatt to the post of HSG II on 26.12.1980 was erroneous and illegal and, therefore, the applicant cannot claim the stepping up of his pay so as to bring it on par with the pay of Shri Bhatt as on 1.4.1989. It requires to be emphasised that the respondents say that conditions for stepping up of pay in the case of the applicant are not fulfilled only on the ground that they had wrongly promoted Shri Bhatt to the post of HSG II. In this connection, the respondents have referred to the decision of the department dated 21.3.1979

(Annexure R I) and pointed out, and there is no dispute about it, that the posts of HSG II cadre in the Post Offices were earlier shared by IPOs line (the line to which the applicant and Shri Bhatt belong) and the posts of LSG, i.e., General Line posts in the proportion of 50:50. It is further stated, and there is no dispute about it also, that by the decision dated 21.3.1979 all the 100% posts of HSG II were reserved for LSG i.e. General Line people and yet Shri K.C.Bhatt who belonged to IPOs cadre was wrongly promoted to HSG II post on 26.12.1980. It may be noted here, again as an undisputed fact, that Shri Bhatt has retired from service on 30.6.1990 and even his pension, presumably after audit of pension papers, has been fixed on the basis of his pay being Rs.3200/- w.e.f. 1.4.1989. Therefore, the obvious anomaly of a senior getting less pay than his junior has continued right till the day. And yet, the department wants to perpetuate this anomaly only on the ground that, the promotion of Shri Bhatt to HSG II on 26.12.1980 was erroneous. At the stage of arguments, Shri Kureshi even went to the length of contending that the promotion of Shri Bhatt to HSG II post was illegal and void ab-initio and, therefore, the consequence of such promotion of Shri Bhatt namely fixation of his pay at Rs.3200/- from 1.4.1989 cannot be made a valid basis by the

applicant for stepping up of his pay. Shri Kureshi contended that the applicant cannot claim removal of anomaly on the ground of hostile discrimination against him vis-a-vis Shri Bhatt.

7. We will presently advert to the question whether it is now open to the department to contend that the promotion of Shri Bhatt to the post of HSG II was illegal or even erroneous and whether, in fact, there was any error or illegality in promoting Shri Bhatt to the post of HSG II on 26.12.1980. However, what is required to be emphatically pointed out at this stage is that there is no dispute about the fact that the anomaly with which we have come across in this case has arisen because of the fixation of Shri Bhatt in the revised scale in the Group 'B' post has a direct nexus with the revision of pay scales which were effected pursuant to the acceptance of the Fourth Pay Commission recommendation. The question is whether such an anomaly is not required to be removed under Government of India's orders issued under FR 22-C and produced at Annexure A-4 by the applicant. These orders clearly show that, in cases where a Government servant promoted to a higher post before the 1st day of January, 1986 (the applicant was promoted to the post of HSG II

on 10.1.1978 and to Grade 'B' post on 27.11.1984) draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1986 (Shri Bhatt was promoted to Group 'B' post on 27.3.1989 and he opted for the revised pay scales from 1.4.1989), the pay of senior Government servant should be stepped up to an amount equal to the pay as fixed for his junior in that higher post (Group 'B' post). It is also laid down that the stepping up should be done w.e.f. the date of promotion of the junior Government servant. It is true that it is then stated in the decision or order that such stepping up has to be done if the three conditions mentioned in the decision are fulfilled. The first condition is that both the junior and the senior Government servant should belong to the same cadre and the post in which they have been promoted should be identical in the same scale. There is no dispute, as indeed there can be none, that both Shri Bhatt and the applicant belonged to the same cadre before their promotion to Group 'B' post and the post to which they were promoted from Group 'B' post is identical and in the same scale. Thus, there is no question of non-fulfilment of this first condition mentioned in the decision in question. The second condition is that the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay, should be identical and there can be absolutely no dispute about the fact that this condition is also fulfilled in the case of the

applicant vis-a-vis Shri ~~Patel~~^{Bhatt}. The third condition is that the anomaly should ^{arise} / directly as a result of the application of the provisions of Fundamental Rule 22-C or any Rule or order regulating pay fixation on such promotion in the revised scale. We are not concerned with the ~~latter~~ part of this third condition as mentioned in the Government's decision or order, because it deals with a case where a junior officer was drawing more pay in the pre-revised scale than his senior by virtue of any advance increments granted to him. This is not a case where Shri Bhatt was drawing more pay than the applicant in any pre-revised scales applicable to both, by virtue of any advance increments granted to him at any time. The third condition then is also clearly fulfilled in the present case, because the anomaly has a direct nexus with the application of the rules and orders regulating pay fixation on the promotion of Shri Bhatt in the revised scale for Group 'B' officers, especially because Shri Bhatt opted for revised scale in the promotion post of Group 'B' w.e.f. 1.4.1989 after his promotion to that post on 27.3.1989 so as to synchronize the fixation of his pay in the revised scale with his next date of increment. In these facts and circumstances, it passes understanding as to how it can be said that the conditions for removal of anomaly, as mentioned in the Government decision

or order (Annexure A-4), were not fulfilled in the case of the applicant. It is very pertinent to note that both in the order Annexure-A as also in the order Annexure A-6, whereby the claim of the applicant for stepping up of his pay is rejected on a general and vague ground that conditions for stepping up of pay as laid down under F.R.22 and the relevant orders passed thereunder were not satisfied. It is not specified as to whether all the three conditions were not fulfilled in the case of the applicant nor pointed out as to which condition or conditions ^{the} out of ~~three~~ conditions were not fulfilled. It is not even remotely suggested, while rejecting the representations of the applicant, that stepping up of his pay was not permissible because the promotion of Shri Bhatt to HSG II was erroneous or illegal. It is only for the first time in the reply filed to this application that the department has come forward with the case that the applicant's claim was not entertainable because of the error or illegality committed by the department in promoting Shri Bhatt to HSG II ^{post} on 26.12.1980. We have already noted above that even if there was any illegality or error in promoting Shri Bhatt to HSG II post on 26.12.1980, such an illegality is so far not

removed or cured by the department and the benefits of higher fixation given to Shri Bhatt are not taken away till date. To say the least, therefore, it is not open to the department to refuse to remove the anomaly on such an after-thought ground. Even otherwise, it would not be open to the department to challenge the legality of the promotion of Shri Bhatt to HSG II on 26.12.1980 and his subsequent promotions till his retirement on 30.6.1990 ^{only} when it comes to the removal of the anomaly arising in the pay fixation of a senior of Shri Bhatt. Shri Bhatt having all along worked on the promotion post from 26.12.1980 can never be deprived of the pay which he has got for actually working on the promotion post. Thus, there is no question of downward fixation of the pay of Shri Bhatt and, that being so, there is no question of rejecting the claim of the applicant ^{to be} put on par with his junior. In any event, the department cannot ask this Tribunal to declare the promotion of Shri Bhatt, illegal in the absence of Shri Bhatt. That way also, it is not open to the department to challenge the legality of the promotion of Shri Bhatt. One can understand if there is a case of a mistake in working out or fixing the pay of a junior officer and a senior officer seeking stepping up of his pay on the basis of such a clear mistake in the fixation of the pay of his junior.


In such a case certainly a senior cannot make the mistake in the fixation of the pay of his junior on the basis for his claim for stepping up of his pay.

8. We may now examine the question as to whether there was any illegality or error in the promotion of Shri Bhatt to HSG II post. The next promotion post for IPO in the regular line was the post of HSG II. There is no dispute that this promotion post of HSG II was to be filled up from the posts of IPOs as also from the other Branch or category, namely, the posts of LSG (General Line Posts) in equal proportion. However, by the decision dated 21.3.1989 (Annexure R-I) all the 100% posts of HSG II were reserved for General line LSG officials. It is, however, very important to note that in the same decision a provision was made for compensating IPOs for the loss of 50% of HSG promotional post suffered by them by deciding that there would be corresponding upgrading of IPOs posts to ASPOs posts. A reading of the decision dated 21.3.1989 (Annexure R-I) makes it amply clear that while reserving HSG II post exclusively for LSG officials, every care is taken to compensate the holders of IPOs post for whom doors for promotion to the post of HSG II were shut by the said decision. It will, therefore, not be wrong to say that the formula was in the nature of a package formula and if one part fell through, the other part would not come

into existence. It is an admitted position that after the decision dated 21.3.1979, the group of IPO officers filed Special Civil Application No.1385/79 in the High Court of Gujarat challenging the said decision and they obtained a status quo order in the said Special Civil Application on 8.5.1979 (vide Annexure R-2) with ^{the} result that, despite the decision dated 21.3.1979, the HSG II post came to be shared in the proportion of 50: 50 by both the groups till 3.12.1980 when, by its orders, the High Court permitted promotions subject to the outcome of the Special Civil Application. In other words, from 3.12.1980 the status quo as ^{was} obtained ~~by~~ till 21.3.1979 was maintained. As already noted, Shri Bhatt was promoted to the post of HSG II on 26.12.1980 i.e. after the status quo order granted by the High Court on 8.5.1979 had come to an end. It is, therefore, that the department contends that the promotion of Shri Bhatt to HSG II post was illegal. It is not possible to attach any illegality to the promotion of Shri Bhatt to HSG II post, despite the fact that this promotion was made on 26.12.1980 i.e. after 3.12.1980. In this connection, it may be noted that, even in December, 1979 (to be precise by the letter dated 14.12.1979), promotions of IPOs to the post of HSG II were protected by ordering that those IPOs who were officiating in

regular vacancies were not to be reverted. This apart, Annexure R-5 shows that, after the High Court lifted the status quo by its order dated 3.12.1980, as the department had taken another decision evidenced by letter dated 1.1.1981 (Annexure R-5) to implement the decision dated 21.3.1979 and had issued promotions accordingly. It was during the intervening period between 3.12.1980 and 1.1.1981 ^{that} Shri Bhatt was promoted to HSG II post on 26.12.1980. In these circumstances, it is not possible to brand Shri Bhatt's promotion to HSG II post as being illegal. That being so, there was no ground for the respondents to reject the applicant's representations for stepping up of his pay. The respondents have produced at Annexure R-6 an extract of F.R. 31-A which covers a case of a Government servant whose promotion or an appointment to a post is found to be or to have been erroneous. It is laid down in this F.R. that, in such a case, the pay of such a Government servant has to be regulated in accordance with any general or special orders issued by the President in that behalf. It is not suggested that the pay of Shri Bhatt has accordingly been regulated under F.R. 31-A in accordance with any general or special orders issued by the President. There is, therefore, no reason to reject the claim of the applicant with reference to the provision of F.R. 31-A.

9. As a result of the above discussion, we find that the applicant is entitled to claim the reliefs which he has asked for. The application, is therefore, allowed. The decision taken by the respondents, namely, Annexure A and A-6 rejecting the applicant's claim for stepping up of his pay are quashed and set aside and the respondents are directed to step up the pay of the applicant to the level of the pay of his junior Shri K.C.Bhatt as on 1.4.1989, i.e. Rs.3200/- and to pay all arrears and allowances to the applicant consequent upon the stepping up of his pay w.e.f. 1.4.1989. No order as to costs, especially in view of the fact that the applicant has appeared in person.


(V. Radhakrishnan)
Member (A)


(N.B. Patel)
Vice Chairman