

3

5

CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 331 of 1990.

Date of Decision : 1st. November, 1991.

Dilip Kumar Mohapatra ... Applicant.

Versus,

Union of India & Ors. ... Respondents.

For the Applicant: M/s. A. Pattnaik, L. Pangari,  
S. Udgata, T. Mitra, Advocates.

For the Respondents: Mr. S. K. Biswal,  
Addl. Standing Counsel (Central).

-----  
C O R A M :

THE HON'BLE MR. N. SENGUPTA: MEMBER (JUDICIAL)

-----

1. Whether reporters of local papers may be allowed to see the Judgment ? *yes*
2. To be referred to the reporters or not ? *No*
3. Whether Their Lordships wish to see the fair copy of the Judgment ? *yes*

....

J U D G M E N T.

N. SENGUPTA: MEMBER (J) .

The applicant is an Officer of the Orissa Cadre of I.P.S.. The application is for a direction to the respondents to grant him incentive allowances in accordance with Annexures 1 and 3 read with Annexure-4 to the application.

2. The applicant's case is that his wife under-went Tubectomy operation on 24.6.86 and that the applicant and his wife have less than three surviving children and his (applicant's) wife under-went the family planning operation for which the C.D.M.O., Cuttack issued Green Card No.019700, vide Annexure-5. Thereafter, he made a representation for granting him two advance increments but his representations have evoked no response from the concerned authorities. Pleading thus, the applicant has prayed for a direction to the respondents to allow him two advance increments in his pay from the month following the date his wife under-went family planning operation.

3. No counter has been filed by the respondents but however Mr.S.K.Biswal, learned Addl. Standing counsel(Central) appeared at the hearing for Respondent No.1 and has advanced certain contentions which may be noticed in the course of the Judgment.

4. Mr.Biswal has at the first instance ~~contended~~ <sup>contended</sup> that in the body of the application there is no indication about the age of the applicant or his

*Mr. Sengupta  
1.11.91*

5

(7)

wife, therefore the application suffers from want of basic materials for <sup>the</sup> grant of the relief asked for by him. No doubt except in the verification made by the applicant, he has not stated any thing about his age but the verification really forms a part of the application therefore the contention of Mr. Biswal that nothing has been stated about the age of the applicant is not quite <sup>correct</sup> perfect. Of course the age of the wife of the applicant who <sup>is</sup> ~~has~~ said to have under-gone Tubectomy operation has not been stated anywhere in the application or in the representations made by him, but having regard to the ordinary practice and custom, of which a court or a Tribunal can take judicial notice, the age of the wife of the applicant could not be more than the applicant's age. Apart from that, the C.D.M.O., Cuttack issued a green card in his official capacity and in the green card issued to the wife of the applicant it was mentioned that the holder of the Card was entitled to the benefits mentioned in the Health and Family Welfare Department resolution No. 34707 dtd. 10.10.83, a copy of this is annexure-2 of this application. There is a presumption that an official act ~~has~~ is done in due course and according to the rules and procedure, therefore, the issue of green card to the wife of the applicant is sufficient evidence of the applicant <sup>- being -</sup> ~~is~~ entitled to the benefits under the resolution Annexure-2 read with Annexure-3. In the <sup>fact</sup> ~~case~~ of this

*Heater*  
1.11.51.

fact I have no hesitation in saying that the applicant is entitled to an incentive allowance which is two advance increments in the nature of personal pay not to be absorbed in the subsequent increments.

5. The learned counsel for the applicant has urged that the applicant is entitled to the incentive allowance from 1.5.1986. The application was filed on 17th. August, 1990. The applicant made a representation in June, 1986. Admittedly the representation has not been disposed of. Ordinarily the application would have been barred under the provision of Section-21 of the Administrative Tribunals Act, but as claim for pay is a recurring cause of action, the application is not wholly barred by limitation. However it cannot mean that the applicant, is entitled to the incentive allowance from 1.5.86 i.e. beyond one year next preceeding the presentation of the application. The learned counsel for the applicant has very strenuously contended that in the matter of pay there can be no question of limitation. I am afraid such a contention cannot be accepted. Under the ordinary rule of limitation wages accruing due prior to three years preceding the claim would be barred by limitation, after the passing of Administrative Tribunals Act, 1985 in which a special period of limitation of one year has been prescribed, any claim for wages coming within the jurisdiction of an Administrative Tribunal beyond one year prior to the date of presentation of the application cannot be entertained.

6  
8

*Mehta*  
11/11/91

6. In view of what has been stated above the Respondent No.3 is directed to allow two advance increments by way of incentive allowance to the applicant and pay the arrears from August, 1989 within three months from the date of receipt of the copy of this Judgment. There shall be no order as to costs.



*M. K. Hossain*  
1.11.91.  
Member (Judicial).

Central Administrative Tribunal,  
Cuttack Bench, Cuttack. Hossain/  
1.11.91