

OA No.391/2009

B.Tarai .... Applicant

-Versus-

Union of India & Ors. .... Respondents

OA No.392/2009

N.G.Mohanty .... Applicant

-Versus-

Union of India & Ors. .... Respondents

OA No.393/2009

J.K.Ranjit .... Applicant

-Versus-

Union of India & Ors. .... Respondents

OA No.394/2009

U.C.Lenka .... Applicant

-Versus-

Union of India & Ors. .... Respondents

OA No.395/2009

G.N.Das .... Applicant

-Versus-

Union of India & Ors. .... Respondents

Order dated: the 22<sup>nd</sup> July, 2010.

C O R A M

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Applicants in all these cases are at present stationed at Integrated Test Range, Chandipur in the District of Balasore. They have been re-employed under Ex-servicemen quota by way of positive act of selection and have been continuing till date on regular basis in different posts under the Respondents. In all these cases the grievance of the Applicants is that though as per the policy decision of the Government they are entitled to one advance increment for undergoing sterilization operation under '**small family norms**'; the same was denied to them and their representations for grant of the benefit were rejected by the Respondents. Hence they have approached this Tribunal in the present Original Application seeking to quash the order

of rejection of their representations and to direct the Respondents to grant one advance/special increment as has been granted to others.

2. The whole and sole/main stand of the Respondents in the counter filed in all these cases are that as in all these cases the Tubectomy Sterilization was done prior to the re-employment in other words while the applicants were in their previous employment, as per the Ministry of Finance OM under Annexure-R/2 the Applicants are not entitled to the benefit of advance/special increment and as such, rejection of their claim cannot be found faulted in any manner. Accordingly, Respondents opposed the prayers of the applicants and have prayed for dismissal of all these OAs.

3. Applicants by filing rejoinder more or less reiterating the stand taken in the OA have tried to justify their claim.

4. Learned Counsel for the Applicants has virtually tried to substantiate the entitlement of the Applicants for one advance/special increment mainly on the basis of the decisions of the Bangalore Bench of the Tribunal dated 3<sup>rd</sup> December, 2004 in OA Nos. 255/2004 & 355 to 357 of 2004 (V.Sreekumar and others v Director General and Scientific Adviser to Raksha Mantri and others). It was contended by the Respondents' Counsel that Bangalore Bench decision being not a judgment in *rem* it is only applicable to the Applicants therein and as such on that basis the applicants cannot claim the benefits when the benefits are strictly prohibited in terms of the order of the Ministry under Annexure-R/1.

5. Having heard the rival submissions, perused the materials placed by the respective parties in support of the pleadings made in these cases.

I have gone through the decision of the Bangalore Bench of the Tribunal placed by the applicants at Annexure-4 to the OA. That the Bangalore Bench decision still holds good in the field is not in dispute either in the counter filed by the Respondents or in course of submission.

It is seen that the Bangalore Bench of the Tribunal reached the decision entitling the applicants therein the benefit of one advance/special increment under small family norm by taking support of the earlier decisions of other Benches in the cases of **S.Ramachandran v Chief General Manager, Telecom, Trivandrum and others, (1991) 16 ATC 641, Devidas Garbad Bhamre v Union of India and others, OA No. 526 of 2000 (Mumbai Bench)** and by the Nagpur Bench in the case of **K.N.Naise v Union of India and others** in OA No.1218/1994. It is also seen that the instruction of the Ministry of Finance (Annexure-R/1) based on which the Respondents rejected the case of the applicants and now opposed the prayer made in these OAs was under consideration before the Bangalore Bench. It is also noticed that the Applicants before the Bangalore Bench were inducted to service on reemployment after being discharged from Military Service and that their family had also Tubectomy Sterilization while they were in previous service as in the cases in hand.

Relevant portion of the order of the Bangalore Bench is extracted herein below:

“6. The fact remains that the spouses of the applicants had undergone permanent measures namely tubectomy for adopting small family norms and such measures are sought to be encouraged by the national policy for containing unbridled increase in population by means of granting special incentives. It is not the case of the respondents that post retirement/discharge from government service the applicants have stopped

practicing the small family norms. In the absence of a rational nexus between adoption of small family norms and yet denial of incentive, post retirement re-employment, we are unable to see any rational ground for sustaining the government order annexed as Annexure-R-I.

.....  
8. In the result the OA is allowed. The Respondents are directed to consider the representations submitted by the applicants and allow the incentive to them with reference to their present rates of increments in the scale of pay applicable to the posts being held by them consequent to their appointment on reemployment. Arrears of increment shall be disbursed within three months from the date of receipt of a copy of this order."

6. Law is well settled in a catena of decisions that precedents are to be followed by the Tribunal; especially when the factual matrix as also issues law involved in the cases decided earlier by one of the Benches of the Tribunal. On examination of the factual aspects of the case before the Bangalore Bench as also the cases in hand, no distinction in any respect in both the case is noticed. As such, by applying the law laid down by Their Lordships of the Hon'ble Apex Court in the case of **SI Rooplal and others -v- Lt. Governor through Chief Secretary Delhi and others**, (2000) 1 SCC 644 -the precedents are to be followed by the Tribunal – I am in complete agreement with the decisions rendered by the Bangalore Bench of the Tribunal (supra) and accordingly hold that the orders of rejection impugned in respective cases are bad in law and accordingly, direct the Respondents to reconsider and allow the incentive to the applicants with reference to their present rates of increments in the scale of pay applicable to the posts being held by them consequent to their appointment on reemployment. Arrears of increment shall be disbursed within three months from the date of receipt of a copy of this order.

7. In the result, these OAs stand allowed to the extent stated above. There shall be no order as to costs. I may state that although each case was heard one after the other since common question of facts and law are involved in all these cases, this common order will govern the above cases.

  
(C.R. Mohapatra)  
Member(Admn.)