

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00271/15

Reserved on : 12.08.2016

Jodhpur, this the 18th day of August, 2016

CORAM

Hon'ble Ms Praveen Mahajan, Admn. Member

Bheem Raj Solanki S/o Shri Mishri Lal, 51 years, R/o 70, Ravi Nagar, Village Pal, District – Jodhpur; Skilled supporting Staff Grade-I, Central Arid Zone Research Institute, Jodhpur.

.....Applicant

By Advocate: Mr Vijay Mehta.

Versus

1. Indian Council of Agricultural Research, Krishi Bhawan, New Delhi through its Secretary.
2. Central Arid Zone Research Institute, Jodhpur through its Director.
3. Assistant Administrative Officer, Central Arid Zone Research Institute, Jodhpur

.....Respondents

By Advocate : Mr Ashok Chhangani.

ORDER

The present Original Application has been filed U/s 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:

“The applicant prays that the impugned order ANN A 1 and the action of the respondent may kindly be quashed. It is further prayed that the respondents may kindly be directed to grant and make payment of special increment from the month of February 1994 together with interest thereon at the rate of 12 % to the applicant. Any other order as deemed fit in the facts and circumstances of the

case may kindly also be passed and the costs be also awarded to the applicant."

2. The controversy involved in the instant OA is in very narrow compass. The applicant is working on the post of Supporting Staff Grade-I in Central Arid Zone Research Institute, Jodhpur. He was made permanent from 29.10.1989. Applicant states that the Govt. of India has issued various instructions through OMs dated 04.12.1979, 30.09.1980, 20.04.1982, 18.01.1983, 17.12.1985 and 15.03.1989 (Collectively as Annex. A/3) providing special increment to the employee whose spouse has undergone sterilization operation after having three children on or after 04.12.1979. The applicant's wife underwent sterilization operation on 15.01.1994 and a certificate dated 03.10.1994 (Annex. A/4) was issued by medical authorities of State Government in which the name of the applicant has also been mentioned. Applicant submitted an application dated 29.04.1997 (Annex. A/5) for grant of special increment. Thereafter, the respondent No. 3 issued an order dated 20.03.1999 (Annex. A/6) granting special increment to the applicant but the same was cancelled vide corrigendum dated 27.10.2006 (Annex. A/7) on the ground that at the time of sterilization operation of his spouse, he was a temporary employee. Hence, the applicant is not entitled to get the benefits of special increment. Thereafter, the applicant submitted many representations, and lastly, on 22.08.2012. In response to

representation dated 22.08.2012, the respondent No. 3 issued a Note dated 07.09.2012 (Annex. A/9) pointing out that though the sterilization operation certificate (Annex. A/4) mentions name of Sohani Devi W/o Bheem Raj, whereas, in other official documents, Sonika W/o Bheem Raj has been mentioned. In response, the applicant submitted his explanation on 22.09.2012 that Sonika Devi and Sohani Devi are one and the same lady, i.e. his wife. She is called Sohni Devi at home. So, his wife is Sonika Devi alias Sohani Devi. Thereafter, the applicant submitted a representation dated 04.12.2013 to the Additional Chief Medical & Health Officer, Govt. Of Rajasthan, Jodhpur to correct the name of his wife in the sterilization certificate. The Additional CMHO vide letter dated 26.12.2013 (Annex. A/13) directed the Marry Stop Clinic to issue certificate by mentioning name of Sonika Devi in place of Sohani Devi in the sterilization certificate but the said clinic did not comply with the same. However, wife of the applicant got her affidavit published in Rajasthan Gazette dated 03.07.2014 stating that she is known by the names of Soni, Sohani Devi and Sonika. Henceforth, she will be known by the name of Sonika Devi only. The affidavit dated 20.04.2014 (Annex. A/14) has been attested by the Sub Divisional Magistrate, Jodhpur. The applicant annexed copy of letter dated 03.09.2014 (Annex. A/15) alongwith affidavit printed in the Gazette (Annex. A/16). Applicant states that respondents have not disputed the fact that Sohani Devi and

Sonika Devi is one and the same person and is wife of the applicant. Despite this, the respondents have failed to grant special increment to him. Therefore, aggrieved of the action of the respondents in not granting him special increment for sterilization operation of his spouse, the applicant has filed the instant OA.

2. The respondents in their reply have stated that the details/present status of family members in performa submitted by the applicant at the time of his appointment as well as DCRG form submitted by the applicant shows name of his wife as "Sonika". The same is also recorded in the service book of the applicant. The respondents annexed copy of DCRG Form, Form No. 3 (Family Details) and Family Pension as Annex. R/1 to R/4. The respondents further state that they were required to make reasonable/minimum inquiry with regard to the name of the wife of the applicant in order to avoid audit objections. If sterilization certificate in the name of 'Smt. Sohani Devi' treating her name as 'Sonika Devi' is accepted, it may amount to revising the entries in the service record. The applicant has also moved to CAZRI that since special increment has been granted to Sohini Devi, therefore, her name may now be recorded as such, in the service book and necessary official record. To ensure that irregularities and illegalities do not take place in such matter, the applicant was

suggested to bring the correct sterilization certificate from the Hospital where the sterilization operation of his wife was performed. The applicant is not entitled to get any special increment since he has not submitted sterilization operation certificate issued in the name of "Sonika" his wife in official records. With regard to Corrigendum dated 27.10.2006 (Annex. A/7), the respondents have stated that after having noticed a clerical mistake/error due to which the applicant was wrongly granted the benefit of special increment, the same was withdrawn/cancelled and amended order was endorsed to the applicant. The applicant did not challenge the legality and correctness of the order dated 27.10.2006 either at that time or even today. Therefore, no relief can be granted to the applicant unless and until this basic order dated 27.10.2006 is challenged. The Original Application filed now in the year 2015 is not legally maintainable as a cause of action which arose in the year 2006 cannot be revived after a period 9 years because the Administrative Tribunals Act lays down the time within which an employee can move to the Tribunal. That apart, the applicant was requested to submit the corrected sterilization operation certificate, but till date he has not submitted the same. The respondents have alleged that the applicant is supposed to get the sterilization operation certificate amended from the Hospital/Clinic where the operation is said to have been

performed. But he despite being so informed, he has not yet submitted such certificate. It puts a doubt whether his wife had at all undergone the said operation or not. The respondents have further stated that in official matters they are supposed to be guided by what is mentioned in the certificate which has been furnished by the applicant, showing that Sohini Devi underwent sterilization operation and whose name is not recorded in the service book of the applicant available with the CAZRI Administration. With regard to the affidavit filed by the applicant, the respondents have stated that such an affidavit will not determine the legal rights of the applicant. The respondents have also alleged that it is not understood as to how and in what circumstances the Sub Divisional Magistrate, Jodhpur had verified such an affidavit. Thus, the respondents have prayed to dismiss the OA with costs.

3. In rejoinder, the applicant while reiterating the averments made in the OA, states that he had been continuously submitting representations. The respondents were also writing letters regularly with regard to sterilization operation and grant of special allowance. Thus, there was no need to challenge any action of the respondents. The matter had not been finally settled since the respondents were issuing letters in this regard. The applicant has challenged order Annex. A/1 dated 11.12.2014 by

way of instant OA on 17.07.2015. Therefore, the OA is within prescribed limitation. He further states that the respondents have not claimed that the applicant has more than one wife and they have also not claimed that Sonika and Sohini Devi are different ladies. The respondents have also in their record thumb impression of Sonika Devi and it is the duty of the respondents to examine both thumb impression.

4. Heard Mr Vijay Mehta, Ld. counsel for applicant and Mr Ashok Chhangani, Ld. Counsel for respondents and perused the record.

5. The issue in the current OA is whether Sonika Devi and Sohini Devi are the name of the same person. If yes, then applicant becomes entitled to avail the special increment, due to him, in pursuance of Govt. of India guidelines, issued by different OMs from time to time, for grant of special increment to the employees who himself, or whose spouse, undergo sterilization operation. As per the applicant, sterilization operation of his wife took place on 15.01.1994 and certificate to this effect was given by him on 03.10.1994 (Annex. A/4).

6. The increment so given to the applicant by the respondents on 20.03.1999 (Annex. A/6) was cancelled on 27.10.2006 (Annex. A/7) by way of a corrigendum. The respondents woke up to the

so called "clerical mistake"; or "error"; and realized after 07 years that the applicant was a temporary employee and hence not entitled to the special increment. Interestingly, it took the respondents another six years i.e. a total of 13 years to point out yet another discrepancy in the applicants' claim. An office note dated 07.09.2012 (Annex. A/9) was sent to the applicant informing him that the sterilization certificate of 03.10.1994 wherein the name of his wife was shown as 'Sohani Devi' is not the same, as the one reflected in his official documents where it figured as 'Sonika'. The applicant was called upon to explain the discrepancy.

7. The applicant submitted his explanation vide letter dated vide letter dated 22.09.2012, mentioning that Sonika Devi and Sohani Devi is one and the same person and is the wife of the applicant (Annex. A/10) enclosing an affidavit dated 21.09.2012. This was followed by the affidavit of Sonika Devi dated 20.06.2014 mentioning that she is known by the names of Soni, Sonika and Sohani Devi in her close family circle. But, henceforth she will be known in the name of Sonika. This affidavit dated 20.06.2014 was attested by the SDM, Jodhpur (Annex. A/14). Vide letter dated 26.12.2013 (Annex. A/13) the respondents demanded that the Clinic which issued sterilization certificate in the year 1994 should certify that it was Sonika alias Sohini Devi who underwent the procedure in their clinic.

8. To expect any hospital to give a certificate to this effect after a lapse of 19 years is, to say the least, preposterous. Not only, because, the hospital/clinic records may not be available after such a long span of time but also because it would be unfair to shift the onus on the clinic, who, in any case, had already issued a certificate in the name of Sohni Devi, based on the information available with them, in the year 1994. They cannot be expected to revise an earlier certificate, issued by them nearly twenty years ago with no fresh evidence/provocation. Nor is the clinic an investigating agency which is expected to conduct such investigation, at the behest of the respondent-department. Having left with no further ammunition, the respondents have even gone on to question whether the spouse of the applicant, at all, underwent an operation. On this point, I am totally in agreement with the plea of the Ld. counsel for applicant that merely because the certificate mentions name of Sohni Devi, instead of Sonika, the doubts raised by the respondents are neither reasonable nor just and fair. It is not the case of the respondents that Sohni Devi is the second wife of the applicant nor anybody has claimed to be second spouse of the applicant till now.

9. I agree that it was absolutely incumbent on the respondents to satisfy themselves whether two different names, i.e. Sonika & Sohni Devi belonged to the same person before granting any

financial benefit to the applicant. But, this should have been done at the initial stage itself when the respondents decided to grant the increment to the applicant. The fact, that no such queries were raised at that point of time, would imply, that probably this discrepancy was reconciled by the respondents. However, since the issue was raised after 16 years by way of an office note dated 07.09.2012 (Annex. A/9), the applicant replied by way of explanation on 22.09.2012, and submitted an affidavit to this effect on 21.09.2012. Later, his wife also gave an affidavit dated 20.06.2014 reiterating that she is known as Soni, Sonika, Sohani Devi etc. in her friend/family circle. This affidavit was duly attested by S.D.M., Jodhpur (Annex. A/14). It is not understood as to why the respondents chose to disbelieve an affidavit duly attested by the competent authority, who is a responsible official, familiar with consequences of such attestation, if found false. Ld. counsel for applicant has even suggested to submit the "thumb impression" of the spouse of the applicant for a forensic verification to check veracity of the claim that Sohini Devi and Sonika are one and the same person.

10. In this entire saga of woe of the applicant, the respondents have come out in a poor light. No timely steps seem to have been taken by them to conclude the simple matter of whether Sonika & Sohini Devi, are two names of the same person, or, whether these are two different people? A discreet enquiry would have brought

out the truth. Or, in an extreme situation, perhaps the course of action suggested by the Ld. counsel for applicant could have put all doubts to rest. There is no magic wand available with any court of law to know the facts of a case. The Tribunal can only go by the pleadings made by the parties and material available on record to come to a conclusion. The respondents have not put forth any cogent reasons or evidence to show why the explanation and the documents produced by the applicant should be treated as false. Only some imaginary queries have been raised and left unanswered without providing any proof to the contrary. The applicant's case stands sufficiently fortified, by his explanation coupled with the documents produced by him. I have no reason whatsoever, to disregard the affidavit of the applicant's wife dated 20.06.2014, duly attested by the S.D.M., Jodhpur.

11. The respondents have also raised the question of limitation. Looking to the entire facts and circumstances of the case and the fact that the applicant has challenged the Office Note dated 11.12.2014 only, without challenging the original order dated 27.10.1996, regarding cancellation of grant of increment, I overrule the objection of limitation.

12. In view of discussions hereinabove made, the OA is allowed. Accordingly, office note dated 11.12.2014 (Annex. A/1) is

quashed and set aside. The respondents are directed to grant special increment to the applicant from the month of February, 1994 with 9% interest p.a. The respondents shall pay the same within 04 months from the date of receipt of this order. No costs.


[Praveen Mahajan]
Administrative Member

Ss/-

