

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 18 of 2000

Thursday, this the 4th day of April, 2002.

CORAM

HON'BLE MR G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR K.V. SACHIDANANDAN, JUDICIAL MEMBER

K.S. Krishnankutty,
Senior Auditor, OE (Au),
Branch Office,
Thrissur.

Applicant

[By Advocate Mr S. Radhakrishnan]

Vs.

1. Union of India represented by the Comptroller and Auditor General of India, 10, Bahadursha Zafar Marg, New Delhi-110 002.
2. The Accountant General (Audit), Kerala, Trivandrum-695 039.
3. Senior Deputy Accountant General, Branch, Thrissur.

Respondents

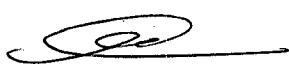
[By Advocate Ms P. Vani, ACGSC]

The application having been heard on 27.2.2002, the Tribunal delivered the following order on 4.4.2002.

O R D E R

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant was relieved from Air Force after fulfilling the terms of engagement on 30-6-1985 after 21 years of service and joined the Accountant General's office as a Clerk/Typist on 19-5-1986 and is at present holding the post of Senior Auditor. The Central Government introduced a scheme for grant of special increment in the form of personal pay for its employees for adopting 'small family norms'. This pay is not to be absorbed in future increases in pay either in the same post or on promotion to higher posts. The rate of personal pay is fixed equivalent to the amount of next increment due at the time of grant of the concession and was to remain fixed during



the entire service. The scheme also mentions the conditions for payment of the special increment. True copy of the OM dated 4-12-1979 introducing the scheme is Annexure A1, which is reproduced as under:-

"G.I.M.F(D.E)O.M.No.7(39)-E-III/79, Dated 4-12-1979 and C&AG's Entt.No.911-A/F.99-79/1-79(109) Dated 26-12-79

Central Government employees who undergo sterilization after having two or three surviving children may be granted a special increment in the form of personal pay not to be absorbed in future increases in pay either in the same post or on promotion to higher posts. The rate of personal pay would be equal to the amount of the next increment due at the time of grant of the concession and will remain fixed during the entire service. In the case of persons drawing pay at the maximum the rate of personal pay would be equal to the amount of the increment last drawn. The grant of concession will be subject to the following conditions.

(i) The employees must be within the reproductive age group. In the case of a male central government employee, this would mean that he should not be over 50 years and his wife should be between 20 to 45 years of age. In the case of a female government employee she must not be above 45 years and her husband must not be over 50 years of age.

(ii) The employee should have two or three living children.

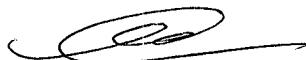
(iii) The sterilization operation must be conducted and the sterilisation certificate must be issued by a Central Government Hospital or under the auspices of the Central Government Health Scheme. Where this is not possible the sterilisation certificate issued by a State Government Hospital or an institution recognised by the Central Government for the purpose will suffice.

(iv) The sterilisation operation can be undergone either by the Central Government Employee or his/her spouse provided the conditions at serial No.(i) to (iii) above are fulfilled.

(v) The concession will be admissible only to the employees who undergo the sterilization operation on or after the date of issue of these orders.

(P/14.Vol.IX/II-36 UNDER PART II OF AUDIT BULLETIN NO:13/80)"

2. The applicant underwent vasectomy operation on 26-9-1981 while in the Air Force service. The sterilization certificate dated 30-1-1982 is Annexure A2. He satisfied all



the conditions required under Annexure A1 and therefore he was granted special increment in the form of personal pay for adopting the 'small family norms'. He was continued to be paid the increment till he was relieved from Air Force on 30-6-1985. Since the special increment was not to be taken for fixation of pay, retirement gratuity and pension benefits, the applicant did not enjoy its benefit along with the pension he was eligible to draw. After joining the respondent department, he made representations for extension of the personal pay for adopting 'small family norms'. One such representation is Annexure A3. Though it was stated that the matter was taken up with the 1st respondent, his request was rejected as per Annexure A4 letter dated 18-3-1998 stating that the reemployment is to be treated as a fresh employment and that the incentive increment for promotion of small family norms in earlier employment is not admissible during fresh employment. The applicant is suffering the loss every month and he continues to suffer on account of the indifferent attitude of the respondents. Similarly situated reemployed ex-servicemen in the respondents' office at Nagpur were granted this benefit as per orders of the Mumbai Bench of this Tribunal in OA 1218/94. The applicant brought this aspect of unequal treatment to the notice of the respondents by another representation dated 7-4-1999, which is Annexure A5. The request was turned down as per letter dated 11-5-1999, which is Annexure A6. Aggrieved by the aforesaid action on the part of the respondents, the applicant has filed this Original Application under Section 21 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"a) call for the records connected with the case;

(Contd..p/4)



- b) declare that the applicant is entitled to get the special increment for promoting small family norms;
- bb) quash Annexures A4 and A6 documents;
- c) direct the respondents to pay all benefits due to the applicant for promoting small family norms as per Annexure A1 scheme with effect from his date of joining the respondents with 18% interest; and
- d) direct the respondents to pay the costs of these proceedings."

3. Respondents have filed reply statement stating that the claim of the applicant is barred by limitation, that the request is inadmissible and that repeated representations will not help the applicant in getting the relief. It is further contended that the applicant had already enjoyed the benefit of special increment upto 30-6-1985, the date from which he was discharged from Defence service and reiterated that the personal pay granted to the applicant was reckoned for calculation of pension and DCRG. The applicant was recruited against the direct quota on 19-5-1986 and joined the Central Civil Service. The benefit of the OM dated 4-12-1979 cannot be extended to him during reemployment because he had already availed the benefit in his previous employment and his request for the same benefit in the reemployed post is not maintainable. The applicant is not entitled to get the benefit in terms of the conditions stipulated in the OM. There is no discrimination and since the applicant's reemployment with effect from 19-5-1986 is a fresh employment, this benefit cannot be extended to him.

4. The applicant has filed rejoinder emphasizing that he is not getting any personal pay towards this count in his pension. It is not envisaged in the scheme. Gratuity is only a terminal benefit and is granted on the basis of past

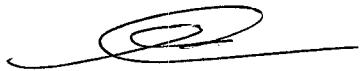


colourful service. Moreover, in the case of pension for persons below Officer rank, it is granted under the one rank one pension scheme. It is not based on the last pay drawn by a person but is referable to a table, which is classified on the lines of trade, group, rank and the number of years of service. The pension in the Air Force is not calculated on the basis of emoluments that they last drew. It is being a special increment that will not be counted for pension in any probability. He also produced the petition filed by a similar person in OA No. 1218/94, which is Annexure A7 and the Bombay Bench of this Tribunal allowed that petition.

5. Respondents have also filed an additional reply statement reiterating the point that personal pay drawn by the applicant has been reckoned for computation of the pension and therefore, the application is not maintainable.

6. We have heard the counsel for the parties in detail and have perused the documents placed on record.

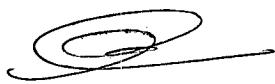
7. This is a social welfare scheme introduced by the government policy to bring down the population of India which appears to be a hindrance to most of the progressive measures and developments. It involves giving incentives to those who adopted small family norms for the government servants. It is an admitted fact that the applicant was an ex-serviceman and subsequently joined the respondent department and presently holding the post of Senior Auditor. The reason for denial of this benefits as per Annexure A-4 is that this benefit is not extended to fresh employment. The operative portion of Annexure A-4 is reproduced as under:



"I am directed to invite a reference to your office letter No.OE.Bills 1/Audit/397 dated 27.2.98 on the subject cited above and to state that reemployment is treated as fresh employment. Incentive increment for promotions small family norms earned in earlier employment is not admissible during fresh employment."

8. Then the question comes whether reemployment of the applicant in the Accountant General's Office under the Central Government service is a fresh employment or an employment in continuation of the earlier one. Even in the Recruitment Rules weightage and preference are given to the ex-servicemen and certain posts are reserved for them and their services are reckoned to the incoming department, including for calculation of pension etc. Therefore, it cannot be termed that the applicant has been absorbed as a fresh hand in the new department for the purpose of extending this benefit but the scheme of incentive increments have been introduced for promotion of 'small family norms' earned in earlier employment is admissible to the incoming department, especially when both are Central Government services provided the applicant fulfills all conditions as per Annexure A-1 scheme. It is an admitted fact that the applicant fulfills all the conditions as per Annexure A-1. This is not disputed. The applicant's counsel has taken us to a decision in a similar case of this Bench of the Tribunal reported in S. Ramachandran Vs. Chief General Manager, Telecom and others [(1991) 16 ATC 641] extending the benefit of the scheme to the applicant therein who was working in the Telecom Department. In that case it was not the applicant who undergone the Tubectomy operation, but his wife. The operative portion of the judgment is as under:

"6. A reading of Annexure A-1 with Annexure R-1(A) it is clear that it is not necessary that at the time of operation the Government servant should be an employee of the Telecom Department as stated in the impugned order. Any Central Government employee satisfying the conditions mentioned in Annexure A-1



read with Annexure R-1(A) would be eligible for the special incentive increment contemplated in the policy statement.

7. The denial of the benefit of incentive increment to the applicant is based on a ground unsupportable. The Tubectomy operation was undergone in the instant case in 1981 after the crucial date fixed for the eligibility of the concession and admittedly the applicant was a Central Government employee at that time. He was serving in the Army from 6.2.1965 to 28.2.1982. Thereafter, he was appointed on 1.5.1983 in the Telecom Department. Since the applicant was a Government servant at the relevant time and he fulfilled all the eligibility criteria for getting incentive increment contemplated in Annexure A-1, the applicant is entitled to succeed."

9. Therefore, the contention that the applicant was only a fresh hand cannot be sustained and therefore, not tenable.

10. Another objection raised by the respondents in this case is that the incentive is calculated for the pensionary benefits of the applicant for the services rendered in the Air Force and the benefit has already been granted to him. The applicant vehemently opposed this and reiterated that he is not getting any pensionary benefits of this incentive for his Air Force service. It is also a common knowledge that generally such incentives are not considered for commutation of pension and no records whatsoever to prove/disprove this aspect was brought to our notice by the parties. Therefore, this matter should be verified by the respondents.

11. In the conspectus of facts and circumstances we hold that the applicant is entitled to get the benefits under Annexure A-1 scheme in his present employment and for that purpose we set aside Annexure A-4 and A-6 and direct the respondents to grant the incentive increment as contemplated in Annexure A-1 with arrears from the date of Annexure A-5 representation i.e., with effect from 7.4.99, in case this is



not included in the pensionary benefits of the applicant of his Air Force service. It should be done within a period of three months from the date of receipt of the copy of this order.

12. The Original Application is allowed as aforesaid. There will be no order as to costs.

Dated the 4th of April, 2002.


K.V. SACHIDANANDAN
JUDICIAL MEMBER


G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

P.

APPENDIX

Applicant's annexure

- A-1 True copy of the relevant extract of O.M. No.7(39)/EIII/19 dated 4.12.79.
- A-2 True copy of the Sterilisation certificate dated 30.1.82.
- A-3 True copy of the representation dated 9.2.98 submitted by the applicant to the 3rd respondent.
- A-4 True copy of the letter dated 18.3.98.
- A-5 True copy of the representation dated 7.4.99 submitted by the applicant to the 3rd respondent.
- A-6 True copy of the letter from the 2nd respondent to the 3rd respondent dated 11.5.99.
- A-7 True copy of the body of the O.a.No.1218 of 1994 filed by Shri Umashankar before the Bombay Bench.

Respondent's annexure

- R-1 True copy of the representation dated 5.10.87 submitted by the applicant.

