

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No. 431/1991

Date of order: 17-9-1992.

Between

V.Raghunandana Rao

... APPLICANT

A N D

1. Union of India, rep. by
its Secretary, Dept. of Personnel,
New Delhi.
2. The Secretary,
Central Board of Direct Taxes,
New Delhi.
3. The Chief Commissioner of
Income-Taxes, Andhra Pradesh,
Hyderabad.
4. The Secretary,
Min. of Works & Housing,
New Delhi.

... RESPONDENTS

Appearance:

For the applicant : Shri Duba Mohan Rao, Advocate

For the Respondents : Shri N. Bhaskar Rao C G SC

CORAM:

The Hon'ble Shri T.Chandrasekhara Reddy, Member (Judicial)

JUDGMENT

(of the Bench delivered by Hon'ble Shri T.Chandrasekhara Reddy, Member (J)).

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 to declare that the applicant is entitled for the incentives for promoting small family with effect from 1-9-1979 and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

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2. The facts giving rise to this O.A. in brief are as follows:

The applicant joined the Income-tax Department as L.D.C. on 13-8-1970. The applicant's wife underwent tubectomy operation on 15-12-1978 in the Government Hospital at Nellore with IP No. 6495. At the time the wife of the applicant underwent tubectomy^m operation, they had^d three children.

3. While so, by circular No.30/80 in OM E.No.7(39)-E.III dated 4-12-1979 (Annexure-V), the Government of India introduced incentives to the Government employees for promoting small family norms. According to the above circular, the employee should have ^{known that} ~~2/3~~ living children and sterilisation operation must be conducted and certificate issued by the Central Government hospitals or by State Government Hospitals or by the institutions^{hospitals} recognised by the Central Government for the purpose^s. The circular further stipulates that the employee^{and his/her spouse} must be within the reproductive age group and in such cases the President is pleased to grant a special increment in the form of personal pay not to be absorbed in the future increments. By circular No.72/80 issued by the Ministry of Works and Housing in OM No.I/17015/13/79-H.III dated 1-9-79, a further incentive of half per cent less in the rate of interest is granted in respect of house building loan taken by the officials who have undergone sterilisation operation on or after 1-9-1979 and in respect of whom house building loan is released in full after 1-9-79.

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27/8/79

4. The applicant by representation dated 10-8-1990 addressed to the third respondent requested that he satisfies all the conditions prescribed for grant of incentives for promoting small family and requested for extending the same for the cases who underwent tubectomy operation prior to the introduction of the scheme. But the applicant's request was not accepted on the ground that the incentives are admissible from the date of issue of the Department of Expenditure's OM dated 4-12-1979. Hence the present O.A. is filed by the applicant for the relief already indicated above.

5. Counter is filed by the respondents opposing the O.A.

6. It is not in dispute that the applicant is an employee working in the Income-tax Department and his wife had undergone tubectomy operation on 15-12-1978. The case of the applicant is that he is entitled to the benefits of the circulars No.30/80 dated 4-12-79 and No.72/80 dated 1-9-79 which are referred to above as he was in government service when the said circulars were issued and his wife had undergone tubectomy operation on 15-12-1978. Whereas the case of the respondents is that the applicant is not entitled to the benefits of the said two circulars as the wife of the applicant had undergone tubectomy operation prior to the issuance of the circulars. A similar question had been dealt by his Lordship Justice K. Ramaswamy, as he then was (now judge of the Supreme Court) on behalf of the High Court of Andhra Pradesh in his judgment dated 29-9-1988 in Writ Petition No.11907/1985. In the said writ petition No.11907/85,

the facts disclose that the applicant therein had joined the judicial service in the year 1963 and had undergone vasectomy operation in the year 1960. In G.O.Ms.No.943, M&H dated 27-9-76 issued by the State Government, the Andhra Pradesh Government servants having two or less children who themselves or their spouses ^{have} undergone sterilisation operation became entitled to two advance increments from the date of sterilisation operation. The said G.O.Ms. No.943, M&H dated 27-9-76 is as follows:

"All Government servants having 2 or less living children who themselves or whose spouses undergo sterilisation operation will be given two advance increments from the date of sterilisation. All Government servants having three or more living children who themselves or their spouses undergo sterilisation operation will be given one advance increment, from the date of sterilisation."

Subsequent to the said G.O., two more G.Os. were issued and it is not necessary to give details of the said G.Os. issued by the Govt. of Andhra Pradesh. One of the contentions raised before the High Court in the said Writ Petition was, as the applicant therein was not in service as on the date when he underwent vasectomy operation, the applicant therein was not entitled to the benefits of the said G.O. dated 27-9-76. Repelling the said contention, his lordship justice Shri K.Ramaswamy speaking on behalf of the High Court has held as follows:

"The object of issuing the Government Order is to grant incentive to the Government employees. Admittedly, as on the date when all the three G.Os were issued, the petitioner is a Govt. servant. He underwent sterilisation operation prior to August 28, 1976. When such is the situation, if the contention of the Government that the petitioner had underwent the operation before joining the Govt. service,

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and therefore he is not eligible to claim the benefits is accepted, then there will be two categories of Government employees viz. those who underwent operation prior to joining the duty and those who underwent operation after joining the duty but prior to the cut of date. Refusing to extend the benefit to those who have joined duty, though they did not undergo operation with a view that the Government would grant such an incentive in future, is violative of Article 14 of the Constitution."

The observations of the learned judge are applicable to the facts of the case herein also. As a matter of fact, the applicant herein is ~~not~~ on a stronger footing than the applicant in the Writ Petition before the High Court of Andhra Pradesh, as the applicant herein was in Government service when his wife ^{subject to no} underwent operation. The spouse of the applicant herein had undergone operation in the year 1978, only a few months prior to the issuance of the said OMs issued by the Central Government that are referred to earlier. So we have no hesitation to come to the conclusion that the applicant too is entitled to the benefits of the two OMs referred to above in view of the judgment of the Hon'ble High Court of Andhra Pradesh referred to above. *which we have followed*


4. Now the question would be from which date onwards the applicant will be entitled to the benefits of the said two OMs. As a matter of fact, Section 21 of the Administrative Tribunals Act places a restriction with regard to the period the relief is to be granted. So in view of the provisions of Section 21^c of the Administrative Tribunals Act, 1985, in our opinion, the applicant is entitled to the benefit of the said

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two OMs only from a period of one year prior to the filing of the O.A. This O.A. had been filed on 23-4-1991. Hence the applicant is entitled to the benefit of the two OMs. with effect from 23-4-1990. In the result we direct the respondents to extend the benefit of the said circulars viz. OM No.F.7(39)-E.III dated 4-12-1979 issued by the Min. of Finance, Govt. of India (Annexure-V) and OM No.I/17015/13/79-H.III dated 1-9-79 issued by the Min. of Works and Housing, Govt. of India (Annexure-VI) with effect from 23-4-1990 and grant all ^{which} benefits to ^{therein} the applicant is entitled to with effect from 23-4-1990. The O.A. is allowed accordingly and we direct the parties to bear their own costs in the circumstances of the case.


(T.Chandrasekhara Reddy)
Member (J).

Dated: 17 th day of September, 1992.


Deputy Registrar

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To

1. The Secretary, Union of India,
Dept. of Personnel, New Delhi.
2. The Secretary, Central Board of Direct Taxes, New Delhi.
3. The Chief Commissioner of Income-taxes, A.P.Hyderabad.
4. The Secretary, Min. of Works & Housing, New Delhi.
5. One copy to Mr.Duba Mohan Rao, Advocate, 69/3-RT,
Vijayanagar colony, Hyderabad.
6. One copy to Mr. Narayana Shankar Rao, CAT, Hyd.
7. One copy to Deputy Registrar(J)CAT.Hyd.Bench.
8. Copy to All Reporters as per standard list of CAT.Hyd.
9. One spare copy.

pvm.

