

ANNEXURE - I

List of Papers in Original Application No.

161/93.

Sl. No. of Papers.	Date of Papers or Date of Filing.	Description Of Papers.
	16-3-95	Part - I Original Judgement
	23-2-94	O.A. & Material Papers
	20-1-94	Counter Reply Counter.

PART - I, PART -- II, PART --- III
Destroyed.

5/7/99.

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
RECORD SECTION INDEX SHEET

O.A NO. 161 /1993

a) Applicant (s) P.S. Suddh Baba

versus

b) Respondent (s) The Secretary min of Health and
family Welfare New Delhi 08/06/95

S.1.No.	Part. I	Description of documents.	Page No.
6		Order sheet	1403
		Original Application	45012
		Material papers	102214
		Order dated .	
		Counter Affidavit .	15621
		Reply Affidavit .	
		Order dated. 16-3-95	32637
	PART. II		
		Duplicate order sheet.	
		" Application	
		" Material papers	
		" Order date .	
		" Counter Affidavit	
		" Reply Affidavit	
		" Order date.	
	PART . III .		
		Vakalat	
		Notice Papers	
		Memo of Appearance.	

16/6/95

OA 161/93

(2)

Date	Office note	Orders
23-9-94		<p>It is stated by the learned Counsel for the applicant that the Judgment copy in W.P. No. 11901/85 on the file of AP High Court is yet to be received and he will be filing the same very shortly. Hence Post this OA for hearing on 30-9-94.</p> <p><u>A</u></p> <p>HREN M(A)</p>
15-12-94		<p>Post this OA for hearing on 20-12-94. Learned Counsel for the respondents submit that he will circulate a copy of Supreme Court Judgment which he relies upon to the applicant Counsel.</p> <p><u>A</u></p> <p><u>HREN</u></p> <p>Appeal on behalf of M(A) O.A. is reserved for Judgment.</p> <p><u>B</u></p> <p><u>HREN</u> Hmbs...</p>
<u>20-12-94</u>		<p>cahd - 6</p> <p><i>5mcgenty</i> <i>MoS</i></p>

02/01/93

①

⑥

6/2/95

✓ Rm 12 on 7-2-95.

02/01/93

22 (P3)

02/01/93

✓

B 10

OK (CJ)

Post on 13/2/95 for orders.

Han 12 Han
W 12 V

13/2/95

✓

Post on 23/2/95 as post hand

Han 12 Han
W 12 V

7/3/95

✓ Post on bimonthly post to a/c
for Jindam on 13.3.95

Han
W

Han
V

13/3/95

Post on 14/3/95 for Jindam.

Han
W

✓

14-3-95

Judgement pronounced.

The a/c is dismissed.

No costs - orders side

Separate sheet.

✓
SARAH
RCCA)

✓
JUNIOR
V

16/11/11

1. max applied in a compact

2. Firmation

3. Schere für 6.11.11. aus ④
26 NPS

Hebe auf diese oder andere

Opferbar auf die alte

antiklost fast gleich aussehend.

OA 161/9)

One instrument in the form of S.P. instrument
4-12-79. H.F. Society of owners

Kishore Kumar & Ors v. O.O.J.

1990 (4) SCC 20

1992 AIR (Vol 1) 25 (Supreme Court)

1993 SCC (Law) Part II 1123 (Para 10)
1128.

DCR is occurring
whereas wherein is continuing.

Applicant citation

571993(4)SC50).

DA-161/93

3

Date	Office Note	Orders
<u>18/2/94</u>		<p>None for the applicant.</p> <p>Post it for final hearing on the next date of Single Member Bench.</p> <p><i>S</i></p> <p>HABG n(A).</p>
<u>24-2-94</u>		<p>On the request of the applicant's counsel 4 weeks time is granted.</p> <p>Post it thereafter before the single member bench.</p> <p><i>HABG - n(A)</i></p> <p><i>BOC</i></p>
<u>21-3-94</u>		<p>4 weeks time is given to file the counter reply.</p> <p>List the case thereafter for final hearing</p> <p><i>HABG n(A)</i></p>
<u>28.3.94</u>		<p>Post it after 3 weeks rejoinder if any in the meantime</p>

*HABG
n(A)*

OA 161/93

Date	Office Note	Orders
18-4-94		<p><u>18-4-94</u></p> <p>on the request on behalf of the Applicants' counsel, adjourned to 29-4-1994.</p> <p>HABG M(A)</p> <p>B.O. <u>D</u> DR.J <u>Q</u> <u>16/4</u></p>
26/5/94.		<p>case on 9/6/94.</p> <p>HABG. M(A)</p> <p><u>B.O.C</u></p>
19-8-94		<p>The main point to be adjudicated here is to whether this circular dated 4-12-1979 is applicable to all those who joined earlier to the issual of that circu- lar. In the W.P.11907/85 on the file of AP High Court such benefits were extended even to those who have joined earlier to the issual of similar circular by State Government. It is essential that this judge- ment is gone through before coming to a final decision.</p> <p>Learned counsel for the applicant states that he will produce this judgement within a weeks time. Post this on 19-9-94. Treat this case as part-heard.</p> <p><u>HRR</u> M(A)</p>

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. NO./T.A. NO. 161 1993

P. S. Sudhir Babu et al Applicant (S)

Versus

The Secretary, M/s. Health & Welfare New Delhi et al Respondent (S)

Date	Office Note	Orders
25.2.93		<p>Mr. R. Venkateswara Rao, for the applicant and Mr. M.R. Devraj, for the respondents are present.</p> <p>Heard.</p> <p style="text-align: right;">M. M.</p> <p>Admit. The respondent ought file their counter within 8 weeks with a copy to the Advocate for the applicant. The applicant may file his rejoinder if any within 2 weeks. Therefore, keep the case before the Registrar, after the pleadings are complete.</p> <p>Learned counsel for the applicant filed RA. 157/93 to file a joint application. Heard. RA is allowed.</p> <p style="text-align: right;">T. C. n HNUK WIC(A)</p>

214
215

OA. 161/93.

(3)

(2)

Date	Office Note	Orders
17-6-93	<u>Service</u> <u>Rs. 1 to 3 Served</u> <u>Before the D.R.C.B</u> <u>for Counter</u>	Even after granting 8 weeks time for filing counter, the Counter is not filed. Hence Post before court for orders. 17/6/93 D.Y. Registrar (C.B)
23-6-93		Further six weeks time granted for filing counter. Thereafter list the case for final hearing in its turn. T C.R (HTC SR) M(J)
9/6/93		Finally 16 weeks time is granted to the respondent to file counter. List the case for final hearing in its turn. H-CSR M(J)
10.1.94		Counter of the respondent is not yet filed, 2 weeks time is granted to the respondent to file counter with a copy to the Advocate for the applicant. List the case for final hearing after pleadings are completed. T C.R HTCSR M(J)
24.1.94	Counter filed by Mr. M. Devaraj, Sr. Advocate on 20/1/94.	

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD.

ORIGINAL APPLICATION NO. 161 OF 1993

Shri P. S. Sudhir Bahn & I.P.G. Applicant(s)

Versus

Secretary, Min of Health & Delhi

1-264.

Respondents(s)

This application has been submitted to the Tribunal

By Mr K. Venkateswaran Advocate Advocate Advocate

under section 19 of the Administrative Tribunal Act. 1985 and same has been scrutinised with reference to the points mentioned in check list in the light of the provisions contained in the Administrative Tribunal (Procedure) Rules, 1987.

The application has been in order and may be listed for admission on 29/2

ASR
Scrutiny Officer.

ASR
Deputy Registrar (S)

Particulars to be examined	Endorsement as to result of examination
8. Has the index of documents been filed and has the paging been done properly ?	y
9. Have the chronological details of representations made and the outcome of such representation been indicated in the application ?	u
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal ?	y
11. Are the application/duplicate copy/spare copies signed ?	s
12. Are extra copies of the application with annexures filed.	
(a) Identical with the original	y
(b) Defective	
(c) Wanting in Annexures	c
No /Page Nos. ?	c
(d) Distinctly Typed ?	
13. Have full size envelopes bearing full address of the Respondents been filed ?	y
14. Are the given addresses, the registered addresses ?	s
15. Do the names of the parties started in the copies, tally with those indicated in the application ?	s
16. Are the translations certified to be true or supported by an affidavit affirming that they are true ?	u
17. Are the facts for the case mentioned under item No. 6 of the application.	
(a) Concise ?	y
(b) Under Distinct heads ?	
(c) Numbered consecutively ?	s
(d) Typed in double space on one side of the paper ?	y
18. Have the particulars for interim order prayed for, stated with reasons ?	very brief u s

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

APPLICANT (S) *P.P. Behan & 1965*

RESPONDENT (S) *Secretary, wing Health, Hyderabad 26*

Particulars to be examined	Endorsement as to result of examination
1. Is the application Competent ?	y
2. (a) Is the application in the prescribed form ?	y
(b) Is the application in paper book form ?	{
(c) Have prescribed number complete sets of the application been filed ?	}
3. Is the application in time ?	y
If not by how many days is it beyond time ?	{
His sufficient cause for not making the application in time, stated ?	2
4. Has the document of authorisation / Vakalat name been filed ?	y
5. Is the application accompanied by B.D./I.P.O. for Rs. 50/-? Number of B.D. / I.P.O. to be recorded.	{
6. Has the copy/copies of the order (s) against which the application is made, been filed ?	w/c
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed ?	7
(b) Have the documents referred to in (a) above duly attested and numbered accordingly ?	{
(c) Are the documents referred to in (a) above neatly typed in double space ?	}

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

INDEX SHEET (ORIGINAL)

O.A. NO. 161 of 1993

CAUSE TITLE P. S. Sudhir Babu

VERSUS

The Secretary, min. of Health and family
welfare, New Delhi as above

Sl.No.	Description of Documents	Page No.
1.	Original Application	1102
2.	Material papers	889
3.	Vakalat	
4.	Objection Sheet	
5.	Spare Copies	
6.	Covers	

Right to declare the Applicants are entitled for grants of incentives for
observing small family norms undergoing sterilization operation.

~~Family planning~~ ^{incentive}
Postal

Sudhir Babu

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT : : HYDERABAD.

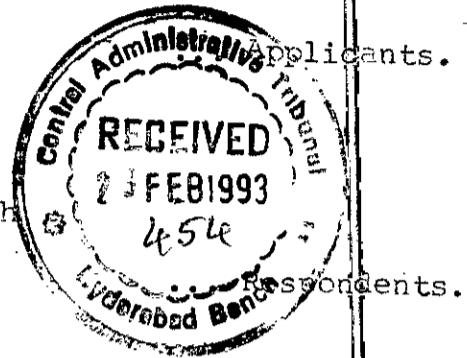
C.A. NO. 161 OF 1993

Between:-

P.S. Sudhir Babu, and others.

And

Union of India represented by the
Secretary to the Ministry of Health
and Family Welfare, New Delhi
and others.



CHRONOLOGICAL EVENTS

S.No. Description of the Documents

Page Nos.

1. Applicants or their spouses have undergone sterilisation prior to 4.12.1979. 3
2. Government of India Ministry of Finance issued OM No.7(39)/79-E-III, dt.4.12.79 granting special increment etc. 3
3. Government issued circular No. 14-1/90/Medical, dt.20.6.90 extending the ~~family~~ facility with retrospective effect 4.12.79 to those having one surviving child. 3

Hyderabad,

Dated:

C. Venkateswara Rao
Signature of the Counsel.

(5)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYD. BENCH: AT: HYDERABAD.

O.A.NO. 161 OF 1993.

I N D E X

S.No.	Description of the Documents.	Pg. Nos.	A.Nos.
1.	APPLICATION	1 to 7	-
2.	Lr.No.14-1/90-Medical dt.20.6.90 from Govt. of India, Ministry of Communications, Dept. of Posts, Dakbavan, New Delhi.	8	1.
3	Particulars regarding Devi Sahai	9	15


Signature of the Applicant.

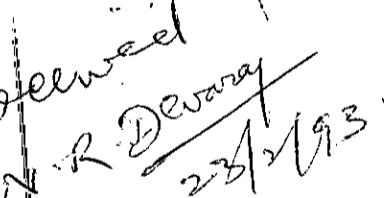
K. Venkateswaran
Counsel for Applicant

FOR OFFICE USE ONLY:

1. Date of Filing :

2. Regn. No. :

Signature of the Registrar.


Received
R. Devay
23/2/93

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT : HYDERABAD.

O.A.NO. 161 OF 1993

Between:-

1. P.S.Sudhir Babu, S/o.Late Sri P.Sreeramamurthy, aged about 47 years, R/o.H.No.3-13-45, Madhura Nagar, Ramanthapur, Hydersbad. Occ: Senior Accountant, Office of the Director of Accounts (Postal), Hyderabad.
2. R.Bhogeswara Rao, S/o.Sri R.Venkateswarlu, aged about 45 years, Occ: Senior Accountant, O/o. the Director of Accounts (Postal), Hyderabad.
3. M.Chidambaram, S/o.Sri M.Satyanarayana Murthy, aged about 42 years, Occ: Senior Accountant, O/o.the Director of Accounts (Postal), Hyderabad.
4. Ch.Venkateswarlu, S/o.Ch.Lakshmi Narasaiah, aged about 46 years, Occ: Junior Accounts Officer, O/o.the Director of Accounts (Postal), Hyderabad.
5. V.S.Somayajulu, S/o.Late Sri V.Venkateswara Rao, aged about 46 years, Occ: Senior Accountant, O/o.the Director of Accounts (Postal), Hyderabad.
6. S.Ramakrishnaiah, S/o.Sri S.Subba Rao, aged about 46 years, Occ:Senior Accountant, O/o. the Director of Accounts (Postal), Hyderabad.
7. K.Bethaiah, S/o.K.Lingaiah, aged about 42 years, Occ:Senior Accountant, O/o.the Director of Accounts (Postal), Hyderabad.
8. A.Vijayasaradhi, S/o.Sri A.Narasimha Murthy, aged about 47 years, Occ:Senior Accountant, O/o.the Director of Accounts (Postal), Hyderabad.
9. K.Nageswara Rao, S/o.Late Sri V.Gangadhara Sastry, aged about 46 years, Occ:Senior Accountant, O/o.the Director of Accounts (Postal), Hyderabad.
10. A.Suryanarayana Murthy, S/o.Sri A.Satyanarayana, aged about 48 years, Occ:Senior Accountant, O/o.the Director of Accounts (Postal), Hyderabad.
11. N.Sree Ramachandra Murthy, S/o.Sri N.Ramakrishna, aged about 42 years, Occ: Clerk, O/o.the Director of Accounts, (Postal), Hyderabad.
12. P.Subrahmanyam Sastry, S/o.Sri P.Veerabhadra Rao, aged about 46 years, Occ: Assistant Accounts Officer, O/o.the Director of Accounts (Postal), Hyderabad.
13. S.Satyanarayana, S/o.Sri Lacanna, aged about 43 years, Occ:Senior Accountant, O/o.the Director of Accounts (Postal), Hyderabad.
14. K.Sitaramanjaneyulu, S/o.Sri K.Subba Rao, aged about 43 years, Occ:Senior Accountant, O/o.the Director of Accounts (Postal), Hyderabad.
15. N.V.V.Venugopala Rao, S/o.Sri N.Satyanarayana, aged about 46 years, Occ:Senior Accountant, O/o. the Director of Accounts (Postal), Hyderabad.
16. K.Nageswara Rao, S/o.Sri K.Nagaraja Rao, aged about 43 years, Occ:Senior Accountant, O/o. the Director of Accounts (Postal), Hyderabad.
17. K.U.M.Sarma, S/o.Late Sri K.V.S.Sarma, aged about 47 years, Occ:Accounts Officer, O/o. the Director of Accounts (Postal), Hyderabad.

18. B.Dharma Rao, S/o.Sri P.Ramaswamy, aged about 49 years, Occ: Assistant Accounts Officer, O/o.the Director of Accounts (Postal), Hyderabad.

19. U.S.Prakasa Rao, S/o.Sri U.L.N.Avadhanlu, aged about 44 years, Occ:Senior Accountant, O/o.the Director of Accounts (Postal), Hyderabad.

20. I.Chakrapani, S/o.I.Venkata Das, aged about 57 years, Senior Accountant, O/o.the Director of Accounts (Postal), Hyderabad.

...APPLICANTS

AND

1. Union of India represented by the Secretary to the Ministry of Health and Family Welfare, New Delhi.
2. The Director General, Department of Posts, New Delhi.
3. The Director of Accounts, Postal, Daksadan, Hyderabad.

... RESPONDENTS.

PARTICULARS OF THE APPLICANTS

1. 1. Particulars of the Applicants : Shown as above.
Address for Service of Notices : Mr. K.Venkateshwarrao, Advocate, 2-2-1136/3, New Nallikurru, Hyderabad.
2. Particulars of the Respondents & Address for Service of Notices : Shown as above.
: :
3. Particulars of the Order:-
 1. Order No. & Date : Lr.No.14-1/90, Medical, dt.20.6.90.
 2. Passed by : Ministry of Communications, Dept. of Posts, DakBhavan, Newdelhi.
 3. Subject in brief : Grant of Incentives for observing small family norms in the form of one sterilisation etc.
4. JURISDICTION: - The Applicants submit that the subject-matter of the O.A. is within the jurisdiction of the Tribunal as per Section 14 of the Admn.Tribunals Act, 1985.
5. LIMITATION:- The O.A. is within time as per Section 21 of the Admn.Tribunals Act, 1985.

6. FACTS OF THE CASE:-

(A) The Applicants are aggrieved by the impugned action of the respondents in not granting and extending the family planning incentives for promoting small family norms to the applicants eventhough the applicants or their spouses have undergone sterilisation after having not less than one/more than three

(8)

surviving children and satisfied all the other conditions stipulated by the Government, on the only untenable ground that the applicants or their spouses got themselves sterilised earlier to 04.12.1979, vide Lr.14-1-90, Medical, dated 20.06.1990 Ministry of Communication Department of Posts, Dak Bhavan, New Delhi which is illegal, arbitrary, discriminatory and cannot be justified in the eye of law.

Annexal 3 (app 8)

(B) The Applicants submit that the applicants 1,2,3,5,6, 7,8,9,10,13,14,15,16,19 and 20 are the Senior Accountants, the Applicants Four(4) is Junior Accounts Officer, the Applicant 11 (eleven) is a clerk, the applicants 12 and 18 are the Assistant Accounts Officers and the applicant 17 is the Accounts Officer working under the control of the third respondent. The Applicants submit that our Country has been facing with the ever increasing population and it has become a challenge to the nation to control the population. In this regard the Government have been taking several schemes like granting incentives for those who undergo sterilisation from time to time by way of cash awards etc. The Government of late, has also been considering seriously to promote small family norms among its own employees also towards this end. In this background the Government of India, Ministry of Finance issued O.M.No.7(39)/79-E.III, dated 4.12.1979, granting a special increment in the form of personal pay equal to the amount of next increment due or the increment last drawn for those drawing the maximum at the time of operation to the Government employees who undergo sterilisation after having two or three surviving children and the said orders were later modified and the benefit of incentives for observing small family norms were extended to the Government servants or their spouses who undergo sterilisation operation even after having one surviving child, with the same conditions as stipulated earlier as can be seen from the Government of India, Ministry of Health and Family Welfare O.M.No.N-23011/9/85-PLY, dated 17.12.1985 and No.23011/71-88-PLY, dt.15.3.1989. Later,

(2)

the Government issued circular Lr.No.14-1/90/Medical, dated 20.06.1990 extending the facility with retrospective effect to those who underwent sterilisation operation on or after 4.12.1979 and as such the employees were made entitled to the grant of incentive increments from the first of the month following the date of operation.

(C) The Applicants submit that in accordance with the policy laid down by the Government of India from time to time all the Central Government employees who or whose spouses have undergone sterilisation operation on or after 4.12.1979 were granted special incentive increment payable from the first of the month following the date of operation. The grievance of the applicants however is that although they or their spouses have also undergone sterilisation operation and having one or three surviving children ~~at~~ the time of sterilisation and also fulfilled other conditions stipulated by the Government for the grant of incentives for promoting the small family norms, they are being unjustly deprived of the same without any valid reason or justification on the only untenable ground that they ~~haven~~ observed the small family norms earlier to the cut-off date of 4.12.1979 which is highly illegal, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India and cannot be justified in the eye of law. (Annexure I) *Refer*

(D) The Applicants submit that they too stand on the same footing with other employees who were granted special incentive increments except that ~~they~~ ~~or~~ their spouses underwent operation prior to 4.12.1979. The applicants submit that when it is the avowed policy of the Government to grant incentive increments for observing small family norms, there cannot be any discrimination as to the date on which they or their spouses have undergone the operation. In other words the Government cannot refuse the grant of incentives to those

who or whose spouses underwent operations earlier to 4.12.1979 on the only ground that the orders were issued for the grant of concessions only on 4.12.1979 and therefore only those employees who or whose spouses had undergone operation after that date are entitled for the incentives. The Government as a model employer cannot discriminate its own employees and grant incentives only to a particular section of the employees who observed small family norms after 4.12.1979 and cannot legitimately deny the same to others who observed the small family norms even much earlier to 4.12.1979 keeping in view the national interest as supreme. In fact, the applicants have realised the gravity of the problem confronting the nation much earlier to the decision taken by the Government and they observed small family norms and therefore they must be treated at least on par with those who observed small family norms after the incentives were announced. Therefore, the applicants cannot be legitimately deprived of the incentives for observing small family norms by imposing the cut off date and such an action cannot stand the test of law. It is relevant to submit that the cut off date in extending the benefits to similarly placed government servants is against the principles laid down by the Supreme Court in D.S.Nakara Vs.Union of India, AIR 1983 SC 130. The Applicants are therefore legally entitled for the grant of incentives for the small family norms. As the respondents have unjustly deprived the applicants of the incentives, their unions raised the issue with the authorities at appropriate levels. Unfortunately there was no response. The Applicants are left with no other alternative than filing this application.

7. REMEDIES EXHAUSTED:- The Applicants have no other effective alternative remedy except/approach this Hon'ble Tribunal.

8. MATTERS NOT PREVIOUSLY FILED: The Applicants have not filed any other O.A./W.P. in this regard and such a case is not pending in any court or authority of law.

9. MAIN RELIEF:-

It is therefore prayed that this Hon'ble Tribunal may be pleased to declare that the applicants are entitled for the grant of incentives for observing small family norms by undergoing sterilisation operation namely

(1) A special incentive increment in the form of personal pay (2) Rebate of ½% in the interest on House Building Advance without reference to the cut-off date namely

04.12.1979 vide Letter No.14-1/90, Medical, dated 20.06.1990,
Ministry of Communication Department of Posts, Dak Bhawan,
New Delhi, by holding the action of the respondents in
denying the applicants their legitimate claim for the
incentives for observing small Family norms on the untenable
ground that the applicants or their spouses underwent
sterilisation earlier to 04.12.1979, as illegal, arbitrary,
discriminatory and cannot be justified in the eye of law
and pass such other order or orders as this Hon'ble Tribunal
may deem fit and proper in the circumstances of the case.

10. INTERIM RELIEF:-

Paragraph six It is therefore prayed that this Hon'ble Tribunal may be pleased to fix an early date for final hearing and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

11. COURT FEE:

1. D.D.No./P.P.O.No. 604 646931 1122 93

2, Dated.

2. Dated.

12. ENCLOSURES:- IPO/DD., Material Papers, Covers, etc.

IPO BC 100/1

1. P01BC10D /Removed

(12)

We, the undersigned applicants herein, do hereby verify that the contents in paras 1 to 6 are true to ~~xx~~ our personal knowledge and the contents in paras 7 to 12 are true from legal advice from our counsel.

We, further verify that the contents in the above paras are true and we have not suppressed any material facts relating to the case.

Signature of the Applicants.

Hyderabad.

Dated:

Counsel for Applicants.

1. Budhia
2. R. Bhogeswaran
3. M. Chidambaranar
4. P. Venkateswaran
5. V. S. Somayaji
6. Ramakrishna
7. K. Belkach
8. Viswadevi
9. T. Nagalakshmi
10. A. Venkateswaram
11. N. Sreekantham
12. P. S. SASTRY
13. Hatyamangayya
14. K. S. L. Rao
15. D. V. V. Venkateswaran
16. K. Nagashankar
17. M. M. S. Rao
18. M. S. Rao
19. G. S. Malleswara
20. J. Chakravarthy

1. Venkateswaran
Counsel for Applicants

Signature of Applicants

33 8 33

soft

ANNEXURE-I.

Copy of Lr.14-1/90-Medical dtd.20.6.90 from Govt.of India,
Ministry of Communications, Dept.of Posts, Dakbhawan,
New Delhi.

Sub:- Introduction of incentive among Central Government employees for promoting small family norms-Grant of incentive for undergoing sterilisation after one surviving child-clarification - Req.

一〇六

Sir,

I am directed to invite your attention to this office Lr.No.14-2/89-Medical dt. 18th May, 1989 enclosing therewith Ministry of Health & Family Welfare (Dept. of Family Welfare OM No.23011/71/88-Ply dated the 15th March, 1989 on the subject noted above and to state that it was intimated that Central Government employees who or spouse underwent sterilisation operation after one surviving child on or after 4.12.1979 but before 6.12.1985 may also be granted special increment provided all other conditions contained in Min. of Finance O.M.No.7(39)/79-E.III, dt.4.12.79 are satisfied.

INTERALIA the orders dt.15th March, 1989 has extended the facility from retrospective effect to those who under went sterilisation operation on or after 4.12.1979 and as such the employees are entitled to the grant of increment from the first of the month following the date of operation. In view of this, arrears will also be admissible to the employees.

This may be brought to the notice of all concerned.

This also disposes of Chief General Manager, Telecom, Ahmedabad Lr. No. WLF/23-3/II/89-90, dt. 11.1.1990.

Yours faithfully,
Sd./. Dr.S.Azad, Director,
(Medical)

// TRUE COPY //

Cricket war

Applicants' Part (We) Describing
Specification

A-11

Page 9

<u>Name</u>	<u>Date of operation</u>	<u>No. of Children</u>
S/Shri		
1. P.S.Sudhir Babu	7-4-1977	2
2. R.Bhogeswara Rao	21-6-1977	2
3. M.Chidambaram	22-6-1977	2
4. Ch.Venkateswarlu	21-10-1977	3
5. V.S.Somayajulu	8-3-1979	3
6. S.Ramkrishnaiah	1974	2
7. K.Bethaiah	9-6-1979	3
8. A.Vijayavaradhi	23-7-1974	3
9. V.Nageswara Rao	6-10-1972	1
10. A.Suryanarayanamurthy	-8-1974	1
11. N.Sree Hanachendra Murthy	-5-1979	2
12. P.S.Sastry	29-1-1977	3
13. S.Satyanarayana	2-7-1977	3
14. K.Sitaramanjaneyulu	10-2-1976	3
15. N.V.V.Venugopal Rao	-4-1976	2
16. K.Nageswara Rao	27-6-1978	2
17. K.U.M.Sarma	27-7-1976	3
18. B.Dharma Rao	7-4-1974	3
19. U.S.Prakasa Rao	-1-1977	2
20. D.Chakrappa	Nov 67	3

(Verbal Answered)

Advocate

(A.L)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.NO.161 OF 1993

Between:

P.S.Sudhir Babu and 19 others ... Applicants

And

Union of India, represented by its
Secretary
Ministry of Health & Family Welfare
New Delhi and 2 others ... Respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF ALL THE RESPONDENTS

I, K.Sandhya Rani, D/O K.Papa Rao aged 32 years,
Occupation: Government service, do hereby affirm and state
as follows:

1.* I am the Assistant Postmaster General working in the
office of the Chief Postmaster General, A.P.Circle and as such
I am fully acquainted with all factes of the case. I am filing
this Counter Affidavit on behalf of all the Respondents as I
have been authorised to do so. The material averments in the OA
are denied, save those that are expressly admitted herein. The
applicants are put to strict proof of all such averments except
those that are specifically admitted hereunder:

2. At the outset it is submitted that the OA is not main-
tainable as the applicants have not exhausted the remedies available
to them under service rules. The applicants as on date have not
represented to the department putting forth their grievances for
redressal rather they have approached this Hon'ble Tribunal for
the same which is not maintainable under law.

3. The OA is also not maintainable as the same is barred

Reefoor

ATTESTOR

एकाउंट लेखा अधिकारी (बजट)
Assistant Accounts Officer (Budget)
एकाउंट लेखा अधिकारी का कार्डिनल
Office of the Chief Postmaster General,
A.P. Circle, Hyderabad-500 001.
A.P. CIRCLE, HYDERABAD-500 001

Deponent

Asst. Postmaster General (S. & V.)
O/o. Chief Postmaster General,
A.P. Circle, Hyderabad-500 001,

by limitation. The applicants herein seeking relief under letter No.14-1/90.Medical dated 20-6-90. Thus the cause of action if any arose on the said date ~~was~~ within one year thereafter as prescribed under the administrative tribunal Act. However the applicant herein have filed this OA on 23-2-93 without taking any effort of representing the matter to the Government. Thus the OA is liable to be dismissed for the latches of the applicants.

4. Without prejudice to the above contentions the respondents submit their reply to para 6 of the OA as follows:

a) Though the Govt. of India launched the Family Planning Programme long back to 4-12-1979 by providing them lump payments and other benefits to all civilians irrespective of their employment, subject to conditions stipulated by the Govt. for the purpose. In the interest of the nation, the Govt. of India from 4-12-1979 onwards introduced a scheme of granting incentive benefits to its employees to promote the small family norms among them and with a view to boost the family planning programme in our country, vide Ministry of finance OM No.7(39)-E-III/79 dated 4-12-79 laying certain conditions for the grant of such incentive. As the scheme of granting incentive to the Govt. servants introduced with effect from 4-12-79, the question of allowing such benefit to those employees who adopted small family norms prior to that date does not arise since they had not adopted the small family norms with an intention to derive the incentive benefit which was not available to them. As such the step taken by the Govt. to introduce the scheme of granting incentives with a view to encourage promoting small family norms among employees is not illegal, arbitrary, discriminatory and it is justified in the eye of law in controlling the sky reaching amount of population of the country.

See below (Signature)

Assist. P. C. S. (I.C.S.)
ATTESTOR
Office of the
A.P. Circle, Hyderabad-500001
A.P. Circle, Hyderabad-500001

Asst. P. C. S. (I.C.S.)
DEPONENT
O/o. Chief Postmaster General,
A.P. Circle, Hyderabad-500001.

b) At the initial stage of introducing the scheme of granting incentives to its employees the Govt. of India laid a ~~xxiii~~ condition (one among such conditions) that the employees should have two or three living children vide OM dated 4-12-79. That condition was further relaxed wherein such of those employees who or whose spouses undergone sterilisation operation after one surviving child are also eligible for the incentive benefit with effect from 5-12-85, vide Ministry of Health & Family Welfare O.M.No.23011/71/88-Ply, dated 15-3-89.

As the scheme was introduced with effect from 4-12-79 and the benefit of the granting incentive to those Govt. servant who undergo sterilisation operation after having one surviving child between 4-12-79 to 4-12-85 was not made available by the department. To remove such disparity, the Govt. again issued an order vide Lr.No.14-1/90 Medical dated 20-6-90 wherein they were also allowed to draw the benefits from 4-12-79 i.e. the date from which the scheme originated.

However these orders cannot be referred by the applicants as they are not applicable to them.

c) Though the applicants or their spouses undergone sterilisation operation and having one or more surviving children as on 4-12-79 but such operations were not performed on or after 4-12-79 with an intention to derive the benefit of the incentive scheme of the Government to its employees and hence the question of depriving them of the benefit of the scheme does not arise. Introducing such incentive scheme from 4-12-79 with a view to encourage the employees to adopt small family norms and also

See below

ATTESTOR

Assist. Commr. of Income Tax (Central),
Officer in Charge, Income Tax (Central),
A.P. Circle, Hyderabad-500 001
A. B.

DEPONENT

Asst. Commr. of Income Tax (Central),
D/o. Commr. of Income Tax (Central),
A.P. Circle, Hyderabad-500 001

in the interest of the nation. Keeping in view the ever increasing population is not illegal arbitrary, discriminatory and violation of Article 14 and 16 of the constitution of India.

d) Since the date the Govt. of India launched the family planning programme, several steps were taken to encourage the Indian Citizens to adopt small family norms by paying them lump cash payments, free distribution of food and other gifts. To make the programme further success the scheme of granting incentive to its employees to encourage promotion of small family norms among them with effect from 4-12-79. The scheme of granting incentive to its employees introduced by the Government with effect from 4-12-79 only as a step to boost the family planning programme and in the interest of the country and as such any employee who have undergone sterilisation operation by himself or by his spouse prior to 4-12-79 cannot claim such incentive illegally as their intention at the time of such operation was not known. It is also not known how they came to know the conditions for the grant of incentive at the time of their operation prior to 4-12-79 whereas such conditions were laid down only on 4-12-79. The incentives granted to those employees or by their spouses undergone family planning operation on or after 4-12-79 is personal to them and it has no comparison with other cases. Under such circumstances the applicants cannot claim such benefit as a matter of right when there are no orders under statutory fundamental rules of the Government.

5. It is respectfully submitted that the applicants are relying on the verdict of the Hon'ble Supreme Court in the case of D.S.Nakara, which has no relevance to the present case. The applicants cannot equalise the pensionary benefit to that of small

Subramanian
ATTESTOR

John
DEPONENT
Asst. Postmaster, C.P. G.
P.O. Postmaster Gopuram
A.P. Circle, Hyderabad 500 001

family incentive scheme of the Government. Each case has to be decided on its facts and law laid down by the Courts in one particular case cannot be applicable universally to all the cases having different point for consideration.

6. For the reasons stated above, the applicants have not made out any case either on the facts or on law and there is not merit in the OA. It is therefore prayed that this Hon'ble Court may be pleased to dismiss the OA with costs and pass such further and other order or orders as this Hon'ble Court may deem fit ~~xx~~ and proper in the circumstances of the case.


DEPONENT

A. F. Circle, Hyderabad 500 004

Solemnly and sincerely affirmed
this 10th day of Jan 1996 and
signed his name in my presence.

BEFORE ME



ATTESTOR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

O.A.NO.161 OF 1993

Between:

P.S.Sudhir Babu and 19 others .. *Petition* Applicants.

And

Union of India rep. by its
Secretary,
Ministry of Health & Family
Welfare
New Delhi and 2 others

Respondents

Filed by:

N.R. Dewan



*Contra side in Regd
in 1991-92
Kulatawar
Asstt
24/1/94*

24/1/94.

Filed by:-

*N.R. Dewan
Sri CGSC*

*man w/ 20
24/1/94*

(50)

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. Prasikarne, C.I.P.

CORAM:

The Hon'ble Shri T.Chandrasekhara Reddy, M.L.A. (Social)

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.

T. C. R.

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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.P.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 operation, they had three children.

3. While so, by circular No.30/80 in OM F.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 ~~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 recognised by the Central Government for the purpose. 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.

T. C. N. S.

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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.36/80 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,

T - C. V - P *.....*

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. Regarding the said contention, his lordship justice Shri K.Ramawamy 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 undergone 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 off 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 ~~weak~~ 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 ~~had undergone~~ 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~~(1)~~ 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 benefits to 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.

CERTIFIED TO BE TRUE COPY

Date..... Cc-A.C.P.
Central Admin.
Hyderabad
Hyderabad

Case Number O.A. 1/3/91
Date of judgment 17-9-92
Copy made today on 17-9-92

Station Office (B)

mhh/

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 Bhaskar, 100 CGRC, C.R.C. Ayd.
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.

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Given on the 11th of June 1967 at 12.35

1. The State of Andhra Pradesh, run by the Secretary, Finance & Planning, Government of Andhra Pradesh, Hyderabad.
2. The State of Andhra Pradesh run by the Secretary, Irrigation & Wildlife Department, Government of Andhra Pradesh, Hyderabad.
3. The High Court of Andhra Pradesh through Regional Administration, Hyderabad.

~~1. The State of Andhra Pradesh, run by the Secretary, Finance & Planning, Government of Andhra Pradesh, Hyderabad.~~

~~2. The State of Andhra Pradesh run by the Secretary, Irrigation & Wildlife Department, Government of Andhra Pradesh, Hyderabad.~~

~~For the reasons mentioned in the accompanying circular, the Irrigation Board pays this sum information to be issued in the State of Andhra Pradesh or any other concerned with the water order of Andhra, according that the Government to also issue of the double order G.O. No. 20, 1963, judicial and Non-judicial at 37-5-1578 and G.O. No. 63, judicial and judicial Department No 10-6-2-202 by holding the Governmental places of execution of the penalties to only Government servants as violative of Articles 14 and 16 of the Constitution of India and under section 14 and each article of which the said section is~~

(28)

In the High Court of Judicature, Andhra Pradesh
at Hyderabad

(SPECIAL ORIGINAL JURISDICTION)

Thursday, the twenty-ninth day of September
one thousand nine hundred and eighty seven eight

PRESENT,

*The Honorable**and**The Hon'ble Mr. Justice K. Ramaswamy.*

WRIT PETITION NO. 11907 OF 1985

Between:-

*Petitioner:**and**Respondent:*

(For the Petitioner
sheet attached.)

Petition under Article 226 of the Constitution of India praying that
in the circumstances stated in the Affidavit filed herein the High
Court will be pleased to

- ✓ For the Petitioner, Mr. B. Subrahmanyam, Advocate
- ✓ For the Respondents, Legal Pleader for Finance and Planning
- ✓ The Court made the following order:-

P1

State. In G.O.Ms.No.943 M & H, dated 27.9.76

it is stated thus:

" 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. "

Later G.O.Ms.No.498 dated 10.8.83 was issued extending the benefit to those who underwent family planning operation prior to August, 1976 and the monetary benefit was given only from 10.8.83. On further representations being made, the benefit was further extended in G.O.Ms.N_o.857 M & H dated 22.12.84 stating that it was decided to pay the arrears on account of the above benefit with effect from 20.8.76 to such Government employees who themselves or whose spouses underwent family planning operation prior to 20.8.76 taking into account the increment in the pay scale applicable to them on the date of sterilisation operation. They shall be eligible for D.A., H.R.A. and

(39)

(W.P.No.11907 of 1985)

Admittedly the petitioner joined the services in the year 1963 as a temporary Judicial Second Class Magistrate. He underwent vasectomy (Birth control) operation in the year 1960 and is claiming benefit of two advance increments from the date of sterilisation as per G.O.Ms.N.943 dated 27.9.76 and G.O.Ms.No.857 dated 22.12.84 wherein the Government have stated that all the government servants who have undergone sterilisation or vasectomy operation prior to August 20, 1976 are entitled to the benefit. The petitioner having undergone that operation is equally entitled to the said benefit. This contention was resisted by the State contending that on the date when the petitioner had undergone operation, he was not a Government servant and therefore he is not entitled to the benefit of two advance increments. The question therefore is whether the petitioner is entitled to such a benefit though on the date when he had undergone the operation he was not a Government servant. To appreciate that question, it is necessary to see the intention of the benefit given by the

P2

would give such an incentive but voluntarily underwent such an operation is equally entitled to the same benefit, and any discrimination meted out to such Government employee would amount to invidious discrimination. Accordingly, it is violative of Article 14. I find force in the contention. The object of issuing the Government order is to grant incentive to the Government employees. Admittedly, as on the date when all the three Government Orders were issued, the petitioner is a Government Servant. He ~~had~~ underwent sterilisation operation prior to August 20, 1976. When such is the situation, if the contention of the Government, that the petitioner had undergone the operation before joining the Government service and therefore he is not eligible to claim the benefit, 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 off date. Refusing to extend the benefit to those who have joined duty, though

C.C.A. as admissible as per the rates existing from time to time during the above period on the incentive increment allowed as per the above order.

Sri Subhashan Reddy, the learned counsel for the petitioner contends that the intentment of extending the benefit of advance increments, two or one as the case may be, to the Government employees working as on the date when the Government Orders have been issued. Therefore, the condition precedent is that as on the date when the Government issued orders, he must be a Government servant, he must have been undergone operation, either himself or his spouse, anterior to the cut off date viz., August 20, 1976 be it whether he is in service as on that date or enter^{ed} the service subsequently. When a person who ~~never~~ had been in service in the year 1960 and underwent family planning operation is entitled to the benefit on the date when the G.O. has come into force, the petitioner who is similarly situated and who had not anticipated that the Government

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✓

they did not under o operation with a view that the Government would grant such an incentive in future, is violative of Article 14 of the Constitution.

Accordingly, I hold that the stand taken by the Government is not tenable. The writ petition is accordingly allowed. No costs. Advocate's fee Rs. 350/-.

[Signature]
29.9.1988

T1H

[Signature]
6.10.88

g. Ministry of Finance & Planning (Financing of AP's ~~Hyderabad~~ Secretariat Buildings, Hyderabad)

a. Ministry of Health & Family Welfare
AP's ~~Hyderabad~~ Secretariat Buildings, Hyderabad

ii. Ministry of Irrigation (Admin) of the Govt of AP, Hyderabad
Hyderabad

iii. Ministry of Finance & Planning
AP's ~~Hyderabad~~ Admin (Central P.W.D.)

5. Finance
One. Mr. B. S. Chidambaram, IAS, Secretary (Finance)

[Signature]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

R.A./M.A./C.A. NO.

ORIGINAL APPLICATION NO.

161/93

OF 199

TRANSFER APPLICATION NO.

OLD PETN. NO.

CERTIFICATE

Certified that no further action is required to be taken
and the case if fit for consignment to the Record Room (Decided)

Dated.

28/6/95

f.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

C.A. No. 161/95

DATE OF DECISION: 16-3-95

P. S. Sivalingam & Ors. Applicant(s)

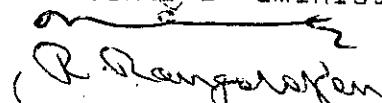
Versus

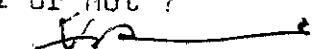
V.O.I.

Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter ~~or not?~~ Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?


(P. Sivalingam)
Member (A)


(V. N. Reddy)
Vice-Chairman/Member

(32)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

O.A.No.161/93.

Dt. of Order:16-3-95.

1. P.S.Sudhir Babu	11.N.Sree Ramachandra Murthy
2. R.Bhogeswara Rao	12.P.Subrahmanya Sastry
3. M.Chidamabaram	13.S.Satyanarayana
4. Ch.Venkateswarlu	14.K.Sitaramanayagayulu
5. V.S.Somayajulu	15.N.V.V.Venugopala Rao
6. S.Ramakrishnaiah	16.K.Nageswara Rao
7. K.Bethaiah	17.K.U.M.Sarma
8. A.Vijayasaradhi	18.B.Dharma Rao
9. V.Nageswara Rao	19.U.S.Prakasa Rao
10.A.Suryanarayana Murthy	20.I.Chakrapani

... Applicants

Vs.

1. Union of India represented by the Secretary to the Ministry of Health and Family Welfare, New Delhi.
2. The Director General, Department of Posts, New Delhi.
3. The Director of Accounts, Postal, Dakshadan, Hyderabad.

... Respondents

* * *

Counsel for the Applicants : Shri K.Venkateswara Rao

Counsel for the Respondents : Shri N.R.Devaraj, Sr.CGSC

* * *

CORAM:

THE HON'BLE JUSTICE SHRI V.NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

* * *

.. 2.

I AS PER HON'BLE JUSTICE SHRI V. NEELADRI RAO,
VICE-CHAIRMAN I

Heard Shri K. Venkateswara Rao, learned
counsel for the applicant and also Shri N.R. Devaraj,
learned Sr. Standing counsel for the Respondents.
When this OA had come up for consideration before
one of us (Member (A)), it was felt that the judgement
dated 17-9-92 in OA 431/91 on the file of this Bench
requires reconsideration. The same was referred to
Divn. Bench and accordingly it has come before us.

2. The applicant or their wives had undergone
vasectomy/Tubectomy operations after having 2 or 3
surviving children ^{even} before 4-12-79. O.M. No. 7(39)/
79-E.III dated 4-12-79 was issued granting a special
increment in form of personal pay not to be absorbed
in future increments in pay either in the same post
or on promotion to the higher post for those employees
who had undergone vasectomy/tubectomy operations or
whose spouses had undergone vasectomy/tubectomy opera-
tions after having 2 or 3 surviving children. When
these applicant's claim for special increment on the
basis of O.M. dated 4-12-79 were negatived, this OA
was filed seeking a direction to the Respondents to
grant them special increment vide O.M. dated 4-12-79.

3. It is conceded even for the applicants that
O.M. dated 4-12-79 referred to supra is prospective.
But it will be violative of articles 14 & 16 of the Constitu-
tion if the said benefit is not extended for
those employees who or whose spouses have undergone
operations before 4-12-79 after they are having 2 or 3
surviving children. 1983 SC 130 (B.S. Nakara Vs. Union
of India) and unreported judgement dated 29-9-88 in
Writ Petition 11907/1985 on the file of A.P. High Court,
besides the judgement of this Tribunal in OA 431/91
are relied upon in support of the said contention.

4. Shri N.R. Devaraj, learned Sr. Standing counsel for the Respondents submitted that as the sanction of special increment as per O.M. dated 4-12-79 is by way of incentive to observe small family norm, there can be reasonable classification of the employees who or whose wives have undergone operations on or after 4-12-79, the date on which the O.M referred to supra was issued and the employees in regard to whom such operations was undergone prior to 4-12-79 for there is nexus between classification and the object sought to be achieved.

5. First we will advert to the judgement of the A.P. High Court in Writ Petition 11907/85. The A.P. State Government issued G.O. Ms. No. 943 dated 27-9-76 sanctioning advance increments for the employees in service when they or their spouses had undergone vasectomy/Tubectomy operations after having 2 or one surviving children. The same benefit was extended even for the employees in regard to whom such operation was undergone even before 27-9-76, as per G.O Ms. 857/22-12-84. When the petitioner therein who had undergone sterilisation operations after having 2 children even before he joined service, was not given the advance increments, the writ petition referred to was filed claiming the said relief. It was held by the A.P. High Court that it will be violative of articles 14 & 16 of the Constitution of India if the benefit was not extended when the operation was undergone even before one joined service, when such benefit was extended even to the employees if they or their spouses had undergone ¹⁴ vasectomy/tubectomy operations after joining service but prior to 27-9-76 the date of relevant G.O for there was no nexus between the classification of the employees in case of whom operation was undergone before joining service and those in case of whom operation was undergone before joining service and those in case of whom operation was undergone after joining service and the object if any which is sought to be achieved in issual of G.O.Ms. 857 dated 22-12-84.

6. But in this case, the special increment is sanctioned vide O.M. No. 4-12-79 referred to supra as an incentive to observe small family norm for it is noticed that it is effective for economic progress of this country which is getting hampered due to over population. The question of sanctioning such increment by way of incentive for those or whose wives who had undergone ~~vasectomy~~^a/tubectomy operations prior to 4-12-79 does not arise as they had already undergone operations. Hence it cannot be stated that the contention for the Respondents that there is nexus between the classification of those employees/or whose spouses had undergone ~~vasectomy~~^a/tubectomy operations on or after 4-12-79 and prior to 4-12-79, and the object that is sought to be achieved is unfounded. We say with respect that this aspect was not adverted to in the OA 431/91 which was heard by the learned single Member of this Bench.

7. The judgement of the Apex Court in Nakara's case indicates that there cannot be any reasonable classification between the pensioners who retired on or after a particular date and those who retired prior to that date in regard to the pension to be granted from that date when both the categories were effected equally in regard to the increase in cost of living.

8. There is no constitutional bar for having classification. The reasonable classification has to be upheld if there is nexus between the classification and the object that is sought to be achieved, when there is no such nexus between those employees, who or whose wives had undergone operations before the employee joined service and those who or whose spouses had undergone operations after the employees joined service, the classification was held by



the A.P. High Court as violative of the articles 14 & 16 of the Constitution of India in the judgement in Writ petition No. 11907/85. But when the special increment as per O.M. dated 4-12-79 referred to supra was sanctioned by the Central Government by way of incentive, it cannot be stated that there is no nexus between the classification of those who or whose spouses had undergone operation prior to 4-12-79, and those who or whose spouses had undergone operation after 4-12-79.

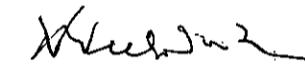
9. Hence the contention of the applicants in regard to the same has to be negatived.

10. We accordingly over-rule the judgement in OA 431/92 dated 13-2-92.

14. In the result, the O.A is dismissed. No costs. /

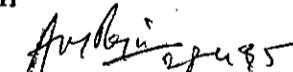


(R. RANGARAJAN)
Member (Admn.)


(V. NEELADRI RAO)
Vice-Chairman

Dated the 16th March, 1995.
Open court dictation

NS


Deputy Registrar (J) CC

To

1. The Secretary to the Ministry of Health and Family Welfare, Union of India, New Delhi.
2. The Director General, Dept. of Posts, New Delhi.
3. The Director of Accounts, Postal, Daksadan, Hyderabad.
4. One copy to Mr. K. Venkateswar Rao Advocate CAT. Hyd.
5. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE- CHAIRMAN

AND

THE HON'BLE MR. R. RANGARAJAN: M(ADMN)

DATED - 16 -3 1995.

ORDER/JUDGMENT:

M. A. / R. A. / C. A. No.

O. A. No. 161/93 in

T. A. No. (W. P.)

Admitted and Interim directions issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected.

No order as to costs.

