

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH

AT HYDERABAD

OA.1674/97

dt.7-4-98

Between

V. Ramesham

: Applicant

and

Supdt. RMS 'Z' Divn.  
Tilak Road  
Hyderabad

2. Director of Accounts (Postal)  
AP Circle, Dak sadan  
Aabids, Hyderabad-

3. Union of India, rep. by Director  
General, Dept. of Posts  
Dak Bhavan, Sansad Marg  
New Delhi

: Respondents

Counsel for the applicant

Krishna Devan  
Advocate

Counsel for the respondents

K. Ramulu  
CGSC

CORAM

HON. MR. R. RANGARAJAN, MEMBER (ADMN.)



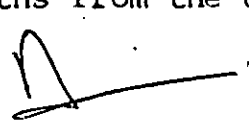
## Order

Oral order (per Hon. Mr. R. Rangarajan, Member (Admn.))

Heard Sri Krishna Devan for the applicant and Ms. Shyama for Sri K. Ramulu for the respondents.

1. The applicant in this OA was given a special increment in the form of personal pay not to be absorbed in future increments as per memo dated 27-12-1980 (Annex.1). Special increment was given as an incentive for promoting Small Family Norm as the applicant had only three surviving children on the date of undergoing vasectomy operation on 1-10-1980. One Special increment was continued with effect from October, 1980; but the special increment was not drawn to the applicant with effect from March, 1993 and the total amount paid to the applicant as Special increment till February, 1993, was sought to be recovered from the pay and allowances of the applicant. The applicant submitted a petition to the PMG and Staff Adalat (Deptl.), Hyderabad Region, on 22-12-1995, followed by another petition dated 22-12-1996 to pay him said increments. That was rejected by the impugned memo No.B.2/Staff Adalat/97 dated 1-7-97 (Annex.4) on the ground that the applicant does not become eligible for grant of Special increment.

2. This OA is filed to set aside the impugned order dated 1-7-97 by holding the same as contrary to the principles of Natural justice and violative of Article 14 of the Constitution of India and for a consequential direction to the respondents to restore the said increments with effect from October, 1980 and arrears from thereon including refund of amount already taken towards disallowed amount within three months from the date of order of the Court.



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3. The applicant submitted a representation for granting him Special incentive increment for promoting Small Family Norm and that was accepted and he was granted increments by order dated 27-12-1980. Besides that the applicant underwent Vasectomy operation on 1-10-1980. It is further stated for the respondents that the applicant's wife gave birth to a child on 22-10-1980 i.e. 20 days after the applicant underwent Vasectomy operation. The applicant failed to inform the respondents in regard to pregnancy of his wife when he underwent Vasectomy operation. Because of that the respondents were not aware that the applicant was likely to get fourth child which is against the principles laid down in granting Special increment. When clarification was asked for from the Ministry of Finance in regard to the pregnancy of his wife at the time of grant of Special increment, the Ministry had clarified that if the employee who is to be granted Special increment is expecting a child as his wife was pregnant at that time and that contravenes the Small Family Norm, such employee cannot be paid Special increment. That was clarified by the Ministry of Finance, Department of Expenditure, by letter No.7(39)-R.III/79 dated 25-4-1981 (Annex.6).

4. In view of the above, Special increment granted to the applicant was withdrawn with effect from March, 1993 and the extra amount paid was also sought to be recovered. His representation was rejected for the reasons stated above by the impugned letter dated 1-7-1997. Hence, the respondents submit that there is no irregularity in issuing the impugned order dated 1-7-1997.

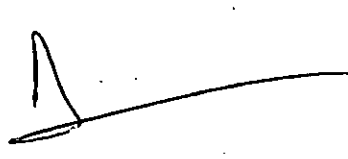
5. The learned counsel for the applicant submits that whenever an increment is withdrawn and the excess amount is



sought to be recovered then such order can be passed only after issuing notice to him and after obtaining reply to the notice served on him further orders can be issued in that connection. The above procedure would be necessary to adhere to the principles of Natural Justice. The applicant had admitted that he had got 4th child after he was granted Special increment and at the time when he underwent Vasectomy operation his wife was pregnant. It may be possible that the expected child may not be alive or the wife of the applicant may get it aborted. Hence, informing pregnancy at that juncture is not necessary. Because of that he has not informed about the position to the respondents when he applied for the Special increment. Further, the applicant submits that the Special increment was sought to be withdrawn thirteen years after granting the same and hence it will not be correct to withdraw increment given 13 years earlier even without <sup>a</sup> proper notice issued to him.

6. Clarification given by the Ministry of Finance dated 25-4-1981 is prospective in nature and such a clarification can take effect only from that date as it was a fresh decision taken. Further he adds that the said letter was not communicated to the applicant. In view of the above, the applicant states that withdrawal of Special increments and also recovery of excess payment is irregular and has to be set aside.

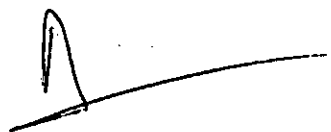
7. The first contention of the applicant in this OA is that letter of Finance Ministry issued in October, 79 contains only five conditions and those five conditions do not include that the pregnancy of the applicant's wife at the time when he underwent Vasectomy operation is to be informed.



The clarification whether pregnancy at the time of undergoing Vasectomy be informed to the Government for granting Special increment was issued later in the year 1981 and hence he is not bound by that clarification. As he fulfilled all the five conditions laid down in the year 1979, the Special increment granted to him cannot be withdrawn.

8. Special increment is given for adhering to the Small Family Norm. The Small Family Norm includes only three surviving children. When the applicant's wife was pregnant on the day of Vasectomy operation it is evident that he will get one more child. If an abortion takes place before birth of a child or child was born dead then what the applicant says may be right and in that case he can conveniently say that he has stuck to the Small Family Norm even though his wife was pregnant on the day of Vasectomy operation. But in the present case the child was born hale and healthy. If that be the case omission of pregnancy on the day he underwent Vasectomy operation cannot be hidden and asking for advance increment for adhering to the Small Family Norm under that circumstances is not proper. The applicant submits that clarification was given only in the year 1981 and hence even if that condition has to be adhered to it has to be adhered to only from 1981 onwards and not earlier to that.

9. The letter issued in 1981 is a clarificatory one to the earlier letter of 1979. Such clarification will take place from the date of the issue of the original letter. As he had stated earlier that the pregnancy is a fact on the day he underwent Vasectomy operation he should have given that detail in his application and on that basis if he has been



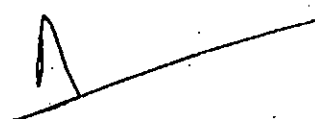
granted additional increment then withdrawal of that increment may be a mistake. But in this case the applicant failed to intimate the correct position when he applied for Special increment. Hence, the details given by the applicant while applying for grant of Special increment was incorrect and in view of the clarification given in the year 1981 withdrawal of Special increment is in order.

10. The second point for consideration<sup>is</sup> whether the increment can be withdrawn after a lapse of over 13 years. The applicant submits that he has submitted his family particulars in the year 1991 in which he has indicated the birth of the fourth child to him. On that basis the respondents stopped the increments and sought to recover the excess payment made to him. Hence, the respondents came to know of the family particulars only after he submitted the details and on that basis they acted. Hence, it cannot be said that he had hidden full family details.

11. If the respondents are not verifying family particulars earlier it cannot be held against the respondents as it is responsibility of the applicant to submit family particulars immediately after the child was born, which he did not do. Hence, we do not find any irregularity if the applicant is denied Special increment even after 13 years when the full facts came to the knowledge of the respondents.


12. In view of the above I am of the opinion that withdrawal of grant of Special increment granted to the applicant cannot be assailed.

13. The next point for consideration is whether the recovery can be restored to now even without issue of notice. The learned counsel for the applicant submits that the applicant has to be given notice before recovery is restored to.

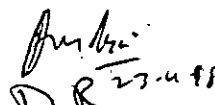


14. In the normal course what the applicant submits is in order. In this case, the applicant submitted his representation and that representation was disposed of. Further, he filed this OA against withdrawal of the increments and recovery of excess paid to him. Respondents have filed a reply. At this juncture giving a direction to the respondents to issue notice and after receiving reply, order recovery of excess payment to the applicant is only a formality and will serve no purpose. As all the contentions raised in this OA had already been discussed as above, the respondents are left with no alternative except to affirm the impugned order after issuing notice to him for recovery. The issue of notice at this point of time is only a formality serving no purpose. In view of what is stated above I see no necessity to issue notice now.

15. Hence, the OA is dismissed. No costs.

  
(R. Rangarajan)  
Member (Admn.)

Dated : April 7, 98  
Dictated in Open Court

  
DR 23.4.98

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## Copy to:

1. Superintendent, RMS 'Z' Division, Tilak Road, Hyderabad.
2. Director of Accounts, (Postal), A.P. Circle, Dak Sahan, Abids, Hyderabad.
3. Director General, Dept. of Posts, Dak Bhavan, Sansad Marg, New Delhi.
4. One copy to Mr. Krishna Devan, Advocate, CAT, Hyderabad.
5. One copy to Mr. K. Ramulu, Addl. CGSC, CAT, Hyderabad.
6. One copy to D.R(A), CAT, Hyderabad.
7. One duplicate copy.

YLKR



4/5/98  
(2)

II COURT

TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

- IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH HYDERABAD

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

AND

THE HON'BLE SHRI B. S. JAI PARAMESHWAR :  
M (J)

DATED:

7/4/98

ORDER/JUDGMENT

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

in

O.A.NO.

1674/87

ADMITTED AND INTERIM DIRECTIONS  
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS  
DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

