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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1348/95

New Delhi this the 14th Day of October, 1999

HON'BLE MR.JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN
HON'BLE MRS.SHANTA SHASTRY, MEMBER (A)

Chander B. Gambhir,
S/o of Late Shri M.R. Gambhir,
R/o 018 Nirman Apartments,
Mayur Vihar I, Extn.
Delhi-110 091.

... Applicant

(By Advocate: Shri Kulbir Prashar, proxy
counsel for Shri D.C. Vohra)

-Versus-

The Union of India
Through the Foreign Secretary,
Government of India,
Ministry of External Affairs,
South Block, New Delhi.

.... Respondent

(By Advocate: Shri N.S. Mehta)

O R D E R (Oral)

By Reddy, J.

Heard counsel for the applicant and the respondents.

2. The applicant was serving as Personal Assistant with the respondents and in that capacity was posted to the Indian Embassy at Washington. On 1.9.87 he was relieved of his duty at Washington and he was posted to Lagos. Preparation time of 8 days was given as per the rules. He was, therefore, relieved of his duty on 1.9.87. It is the case of the applicant that during his preparation time he suffered Asthmatic attack resulting in shortness of breath and severe wheezing. He was advised by the doctor to take rest and also advised against travel. With the result that he has stayed for

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23 days in the Government accommodation. He vacated the said accommodation on 28.9.87 and thereafter stayed with his friend till 16.10.87 and proceeded to his next place of posting at Lagos. The applicant was then subjected to a recovery of US \$ 1150 by the order dated 29.1.88. The applicant made a representation against the said order to the Union of India on 21.3.88 and prayed for the waiver of the entire amount but his representation was rejected by order dated 20.4.88. Hence the present O.A.

3. The learned counsel for the applicant relies upon Rule 4 dealing with 'unauthorised halts'. Annexure 19, in the Handbook of Rules and Regulations relating to Indian Foreign Service, and submits that during the preparation time, as he suffered an asthmatic attack and as the Medical Officer advised not to travel, the applicant ~~he~~ could not leave the place to join at Lagos but he left the quarter since he was compelled to do so by the Embassy. It is, therefore, contended by the learned counsel for the applicant that the applicant was not liable for any penal rent for the quarters.

4. It is, however, the case of the respondents that the applicant did not proceed as scheduled and applied for leave on medical grounds on 7.9.87. When the Embassy issued a memo intimating that he was responsible for expenditure of the Government accommodation for excess duration of the stay on 3.10.87⁴ and stayed back. It is also stated in the counter affidavit that the applicant did not intimate of his travel plans to book his travel passage by the respondents instead he applied for medical leave on

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7.9.87 one day before he was to leave. Thus, it is contended by the learned counsel for the respondents that the over stay of the applicant in the Government quarters was not on genuine medical grounds but only to stay at Washington at the expense of the Govt. in accommodation provided by the Government

5. The only question that has to be decided in this case is whether the stay of the applicant on the ground of illness after he was relieved to join at Lagos is violative of the rules. The rules that are relied upon by the applicant need to be looked into. Annexure A-19 is the rules which deal with authorised halts which include scheduled halt, sickness halt etc. Scheduled halt is defined in Rule 1 as a halt which an officer makes at any station in the course of a journey on transfer or at the intermediate station of transshipment. Rule 4 defines sickness halt with which we are presently concerned. It reads as if, before the commencement of a journey, an officer or a member of his family or Indian servant is suffering from an illness, or disease, the officer shall bring that fact or cause it to be brought to the notice of the medical officer, at the station of the commencement of his journey and shall not himself commence the journey or allow a member of his family or Indian servant to do so unless the medical officer certifies that the malady is not likely to occasion a sickness halt during the journey. If no medical officer is available, the officer shall have the facts brought to the notice of the Ministry and shall comply with such instructions as they may give regarding the commencement of the journey by the person concerned. Thus the rule

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contemplates 'halt' owing to illness, in two situations
 1) before the commencement of the journey or during the preparation period after his relief from the post and 2) at any place during the course of the journey but outside India. We do not therefore accede to the contention of the learned counsel for the Respondents that the rule is inapplicable to the case on hand. The applicant informed that he fell sick on 7.9.1987 i.e. during the preparation period, after he was relieved on 1.9.1987 to join the post at Lagos on 9.9.1987.

6. It was, however, vehemently contended by the learned counsel for the Respondent that the applicant had no intention, from the beginning to proceed as scheduled. He feigned sickness only to provide a ground to come within the Rules and to somehow prolong his stay at Washington, in the house provided by the Govt. There appears sufficient force in the submission. The facts speak for themselves.


7. It is not in dispute that the applicant was given preparatory leave of 8 days to wind up and join the Embassy of Lagos. He was asked to join at Embassy of Lagos on 1.9.87. He was also relieved on that date. By 9.9.87 he was to leave Washington. It was, therefore, necessary for the applicant to make plans for his passage meanwhile. As stated by the respondents in the counter affidavit, the applicant was asked by note dated 28.8.87 to intimate his travel plans just before the applicant was to be relieved so that his passage was to be booked by the respondents but the applicant did not deliberately respond. Sick leave was applied by the applicant on

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7.9.87, i.e., one day prior to the day of departure from Washington. Meanwhile, there was no good reason for the applicant not to have made plans for travel from Washington to join at Lagos by 9.9.1987. No explanation is forthcoming how else the applicant could think of proceeding to join at Lagos if he had not booked his passage till 7.9.87. In the circumstances, the only conclusion that could be drawn was that sickness was only a farce to somehow stay on in the Govt. quarters. Hence the applicant cannot claim to fall within the purview of the Rules.

8. It is further contended by the learned counsel for the applicant that the rules have been applied in respect to some other officers and Miss Shipra Biswas was allowed to retain Government quarter in similar situation. Another officer S.S. Dewani was also given the same benefit. As stated (supra), if any officer comes within the four walls of Rule 4, the employer is empowered to allow them beyond the preparation period. Considering the facts of the present case, we are of the opinion that the respondent was right to ask the applicant to leave the quarters and also for recovery of rentals for the over-stay in the Government quarters.

9. In the circumstances the O.A. fails and accordingly dismissed. No costs.


(Mrs. Shanta Shastri)
M(A)


(V. Rajagopala Reddy)
VC (J)

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