

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA 1638/2004

New Delhi, this the 12th day of July, 2004

Hon'ble Sh. Sarweshwar Jha, Member (A)

O.P.Nerwal, Attaché (Commerce)
(Represented by Sh. Uday Singh
his authorized Attorney in India)
Embassy of India, Washington, USA.

...Applicant

(By Advocate Sh. Sudarsh Menon
with Sh. B.S.Sharma)

V E R S U S

Union of India through

1. Ministry of External Affairs
(Represented by Secretary)
Ministry of External Affairs
South Block, New Delhi.
2. Ministry of Commerce
(Represented by Secretary)
Ministry of Commerce, Janpath
New Delhi.

...Respondents

(By Advocate Sh. K.C.D.Gangwani)

O R D E R (ORAL)

Shri Sarweshwar Jha,

Heard the 1d. counsel for the parties.

2. It is observed that the applicant had approached this Tribunal earlier also vide OA 423/2004 which was decided on 1-3-2004 with directions to the respondents to take a decision on the representation as filed by the applicant in the matter as early as possible preferably before the end of the applicant's extended posting at Washington and pass a speaking order under intimation to the applicant. The applicant is reported to have approached this Tribunal subsequently also vide OA 872/2004 which was dismissed by the Tribunal vide its order dated 13-5-2004 for the reason that the medical facilities which are reported to be available in the USA and which are being availed of by the applicant for the treatment of his son who is suffering from cancer are also available in India. It is observed that on the previous two occasions he had approached this Tribunal for extension of his tenure at our mission at Washington whereas in the

S. Jha

present OA he has prayed for leave being granted to him so as to pursue the medical treatment of his son in the USA where he is already receiving the treatment for the purpose. Elaborating his position, he has also submitted that the line of treatment has been changed by the doctors concerned in the case of his son and, therefore, it will be appropriate that the same treatment continues to be available to his son and hence his request for leave.

3. Ld. counsel for the respondents has, however, submitted that the applicant has since been relieved of his assignment in the USA on 5-4-2004 and he is on unauthorised absence. He has also submitted that the medical facilities as have been sought by the applicant in the USA have been available in India for the last over four decades and the previous OA of the applicant has been dismissed for that reason only.

4. Ld. counsel for the applicant has, however, submitted that his previous OA was decided by the Tribunal on 13-5-2004 and, therefore, his having remained on unauthorised absence since April, 2004 is not relevant.

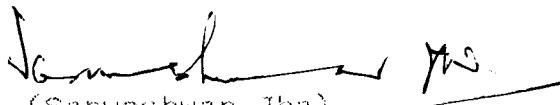
5. On closer examination of the facts as submitted by the applicant and also by the respondents, it is observed that the applicant who had approached this Tribunal earlier also seeking extension of his tenure thereby causing a possible liability on the resources of the Government both in terms of manpower as well as salary ~~salary of salary~~ etc. in respect of the applicant, in the present OA he has sought necessary leave so as to enable him to pursue the treatment of his son in the USA. It has also been submitted by the applicant that leave has been granted in similar situation to others and it should have been allowed in his case also. However, on perusal of the impugned order, it is observed that the respondents have considered the request of the



applicant for grant of leave to him but have found it not feasible to accede to his request ; they have, however, not elaborated why and how they have not found it feasible to accede to his request. I find that the applicant has decided to pursue the treatment of his son on his own cost by being on leave which is due to him. At this stage, Id. counsel for the respondents has submitted that family of the applicant have separately applied for private passport for staying in the USA for the purpose of treatment of their son.

6. Having regard to the facts and circumstances of the case and also the fact that the applicant has now approached this Tribunal for leave which matter should have been looked into by the respondents themselves and decided appropriately keeping in view the problems both in respect of the applicant and in respect of the administration and accordingly the applicant should have avoided approaching the Tribunal again in the matter, the OA is disposed of at this stage itself while hearing on the point of admission with directions to the respondents to give a fresh consideration to the relief as prayed for by the applicant keeping in view the fact that the son of the applicant is suffering from cancer and for which he has already been receiving medical treatment in the USA and further that he proposes to continue with the same by being on leave due to him. Respondents are directed to dispose of the matter after due consideration within a period of fifteen days from the date of receipt of a copy of this order keeping in view the fact that the matter relates to a very serious medical problem.

7. Issue DASTI


(Sarveshwar Jha)
Member (A)

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