

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 872/2004

New Delhi, this the 13th day of May, 2004

Hon'ble Shri S.K.Naik, Member(A)

O.P. Nerwal
Embassy of India
Washington, USA Applicant
(represented by Uday Singh,
21, Pocket D-13, Sector 8, Rohini
Delhi-110085)

(Shri B.S.Sharma, Advocate)

versus

Union of India, through

1. Secretary
Min. of External Affairs
South Block, New Delhi
2. Secretary
Ministry of Commerce Respondents
Janpath, New Delhi

(Shri K.C.D.Gangwani, Advocate)

ORDER(oral)

Applicant, working as Attache, Ministry of External Affairs and posted at Embassy of India, Washington was transferred to Headquarters (Delhi) by order dated 19.11.2003 on completion of his terms in Washington as per Rules on the subject. As the applicant's son is undergoing treatment for thyroid cancer requiring lifelong surveillance, he requested for extension of tenure in Washington upto March, 2004. In the meantime, applicant filed OA 423/2004 challenging the transfer order dated 19.11.2003. The said OA, after discussing the points raised by the applicant, was disposed of on 1.3.2004 with a direction to the respondents to take a decision on the representation of the applicant before extended period of his posting at Washington comes to an end by passing a speaking under intimation to the applicant. Applicant preferred CWP in Delhi High Court

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which was dismissed. In pursuance of Tribunal's order dated 1.3.2004, respondents have passed an order on 12.3.2004 rejecting his request for further extension of his tenure in Washington and directing to be in readiness for transfer back to Hqrs. on completion of his present tenure in March, 2004. By virtue of the present application, applicant has challenged both the orders dated 20.11.2003 and 12.3.2004.

2. Counsel for the applicant has argued that applicant's son is suffering from a very serious life threatening cancer which requires long term uninterrupted treatment. According to him, applicant's son can be treated only in USA and therefore applicant should be continued in USA for treatment of his son without any break or interruption. He further contends that such extensions have been granted to various officers posted abroad on medical grounds.

3. Respondents in their reply have stated that the applicant completed his tenure on 19.9.2003 which was extended upto March, 2004 after taking into account his appeal regarding treatment of his son in USA. All his representations have been duly examined in the Ministry by the competent authority and it is only after careful and adequate consideration that a decision was taken to transfer him back to hqrs. after extended period of tenure.

Answer

4. Counsel for the respondents, drawing attention to the letter dated 31.3.2004 by the doctor under whom applicant's son is under treatment, has contended that this assessment talks only about the patient being kept under observation and not treatment. The counsel also contends that India has made tremendous progress in the field of medicine and surgery and such cases are being treated in our country. This letter clearly states that the medical case requires life long surveillance and they plan MRT and whole body radioactive scan. According to the counsel, such facilities are available in India/ATIMS and the cost of treatment is the responsibility of the Govt. of India. He has also submitted that the applicant has been relieved of his duties in the Embassy of India, Washington on 5th April, 2004 and is likely to return to India after availing of 8 days of preparation time, which is allowed under the rules.

5. By Tribunal's order dated 20.4.2004, it was observed that it would be necessary that the medical dossiers of the applicant's son are subjected to proper examination by the DGHS who shall get the medical dossiers examined especially with regard to whether or not treatments advised by the expert in USA are available in India. In this connection respondents have, by way of an additional affidavit, produced the letter dated 29.4.2004 (Annexure R-1) from DGHS, which has been issued with the approval of Secretary (Health). After discussing the condition of applicant's son and the various tests etc. that are required to be done, it has been concluded in this letter

That

that "treatment and follow up as advised by experts at USA regarding Shri Harsh Nerwal are available in India".

6. In so far as applicant's challenge to order dated 19.11.2003 is concerned, I find that the same has already been adjudicated upon by this Tribunal in OA 423/2004 vide order dated 1.3.2004, pursuant to which respondents have already disposed of applicant's representation. Therefore, I am afraid, the applicant cannot challenge the same order again in the present OA.

7. As regards the other order dated 12.3.2004, in view of the statement of the respondents that the applicant has already been relieved of his duties at Washington on 5.4.2004 and CGHS's letter (supra) making it clear that treatment and follow up as advised by experts at USA regarding applicant's son are available in India, I feel no intervention is warranted in the said order.

8. In the result, I find no merit in the present OA and the same is accordingly dismissed. No costs.

S. K. Naik
(S. K. Naik)
Member (A)

/gtv/