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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.3281 of 1992 Date of decision: 4.11.93

Vas Dev, aged 58 years,Applicant.
s/o Shri Sindhu Ram,
r/o 43, Madan Park, East Punj-abi
Bagh, New Delhi-110026.

VERSUS

Union of IndiaRespondent.
through Secretary to the
Govt. of India, Ministry of External
Affairs, South Block, New Delhi.

Hon'ble Mr.S.R.Adige, Member(A)

For the applicant: Shri D.F.Malhotra, Counsel.

For the respondent: Shri Jog Singh, Counsel.

JUDG-MENT.

In this application, Shri V.Dev, Retd. Senior P.A. M.E.A. New Delhi has prayed for quashing of the impugned orders dated 9.12.91(Annexure-I) and 7.8.92(Annexure-II), and the refund of Rs.74,264/- by regularising the period of Home Leave of his son, together with interest thereon.

2. The applicant's case is that his son, who had accompanied the applicant on transfer to Bogota (Colombia), completed the XIIth grade course in Bogota on 14.6.90. As his son wanted to seek admission in an engineering course in India, the boy proceeded to India on 25.6.90. The applicant's request for a seat in an engineering course for his son, against the quota reserved for children of Central Government employees serving abroad, was turned down by the ME.A. as the applicant had not completed one year of his posting in Bogota. Meanwhile on reaching India, the applicant's son found that admissions had closed in the professional colleges in April, 1990 itself. The applicant then tried for admission of his son in Canada and the boy was admitted in a School there, where he joined on 4.9.90. The applicant claims that he was under the bonafide belief that his son could pursue his studies in Canada

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and the period of his Home Leave Fares could be extended under Rule 2(b) of the Home Leave Fares Rules. Accordingly, he applied to the Ministry on 31.10.90 (Annexure-VI) for extension of the time limit for return of his son to Bogota for one year instead of six months stipulated in Rule 2(b). As the boy had commenced his forward journey to India on 25.6.90, the time limit of six months expired on 24.12.90. The Ministry, however, took nearly four months in taking their decision and rejected the applicant's request on 15.2.91 (Annexure-XII) nearly two months after the expiry of the prescribed time limit of six months. Thus, the applicant was not in a position to call his son back to Bogota from Canada within the prescribed time limit of 6 months. As the applicant had already drawn an advance in respect of the Home Leave Fares, from Government, he was asked to refund the same amounting to Rs. 74,264/-, and the recovery of the said amount was ordered to be made from him vide the two impugned orders. The applicant contends that he had represented against this decision more than once, but the same has been rejected, compelling him to file this O.A.

3. I have heard Shri D.P. Malhotra, learned counsel for the applicant and Shri Jog Singh, learned counsel for the respondent.

4. It appears that the applicant's prayer for reservation of a seat in an Engineering College against the quota reserved for the children of Central Government employees serving abroad was not acceded to because he did not fulfil the requirement of one year's stay abroad, he having joined the post in Bogota on 10.7.89. The respondents adhered strictly

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to the rules and the applicant cannot make any legitimate grievance of the same. The respondents have also correctly pointed out in their counter-affidavit that the applicant should have anticipated the problems regarding his son's education before proceeding on transfer, as these problems did not crop up all of a sudden. It has further been stated that normally an Officer in the zone of consideration for posting abroad is granted exemption in genuine cases and the applicant could have very well sought exemption, if he so desired. The information regarding the dates for filling up the application forms and the dates of exams for the various courses in India are also published regularly in the Indian dailies which are received in the Missions abroad and the applicant could have known in advance that his son would face problems for higher studies after he passes XIIth grade in Bogota, and had the option of leaving him in India at the time of his transfer to Bogota.

5. Shri Jog Singh also emphasized the averments made in the counter-affidavit. Rule 2(b) of Home Leave Fares in the IFS (PLCA) Rules (Annexure-DD) provides that the return journey of a member of a Government servant's family availing home leave fares at Government cost is to be completed within six months of the outward journey. The period of six months' stay may, no doubt, be relaxed but the applicant's belief that such relaxation is a matter of routine, is not well-founded. The home leave is not meant for admission of the children in educational institutions in other countries. No doubt, a Government servant's family members can be permitted to avail

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of 1/3rd of the total sanctioned home leave in other country, but in the instant case, the applicant's son spent only four weeks in India and more than eight months in a third country, and thus violated the spirit of the rules of Home Leave Fares.

6. Further more, the applicant's request dated 31.10 .90 for extending the six months period to 12 months was received in the Ministry on 12.11 .90. No doubt, some delay did occur in disposing of that request, but the non-receipt of a reply from the Ministry on a particular date did not entitle the applicant to extend the stay of his son beyond this period automatically.

7. Shri Malhotra has claimed that extension for the period of home leave from 6 months to 12 months was granted by the Ministry in relaxation to the rules in the case of Smt.Saroj Mathur, w/o Shri S.K. Mathur, High Commissioner of India at Lilongwe, and denial of this benefit to him would, therefore, be discriminatory. However, it has been explained by Shri Jog Singh that the case of Smt.Mathur is not relevant, because she availed the extended period of her stay on home leave in India and not in any other country, while the applicant has sought relaxation of the relevant rules for extended stay of his son in another country for pursuing higher studies. The home leave fares are meant for availing home leave in India and not for pursuing higher studies in a third country.

8. Under the circumstances, it cannot be said that the respondents have acted ^{illegally,} arbitrarily or in a mala fide manner, or in violation of Articles 14 and 16 of the Constitution.

9. In the result, I see no reason to interfere with the impugned orders, and this application fails. It is accordingly dismissed.

10. No costs.

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(S.R. ADIGE)
MEMBER (A)

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