

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 6th DAY OF November 2009)

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mr. D.C. Lakha Member (A)

Original Application No.192 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Pratima Jacob, aged about 59 years, son of Late Shri P. Elisha, Resident of C-410, Rajendra Nagar, Bareilly (Working as Lower Division Clerk in Regional Passport Office, Government of India, Ministry of External Affairs, Bareilly).

..... **Applicant**

Versus

1. Union of India through the Secretary Ministry of External Affairs, New Delhi-110001.
2. Chief Passport Officer-cum-Joint Secretary, Government of India, Ministry of External Affairs, (C.P.V. Division), Patiala House Annexe, Tilak Marg, New Delhi.
3. Passport Officer, Government of India, Ministry of External Affairs, Bareilly.

..... **Respondents**

Present for Applicant : Shri Rakesh Verma

Present for Respondents : Shri Himanshu Singh

ORDER

(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)

We have heard Shri Rakesh Verma, learned counsel for the applicant and Shri Himanshu, learned counsel for the respondents.

2. Learned counsel for the applicant stated that applicant earlier filed O.A. No. 1100 of 2002 challenging the transfer order, relieving order and also the order rejecting his representation. During the pendency of the said O.A.

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the departmental proceedings were finalized and vide order dated 08.04.2003 the penalty of "Stoppage of next two annual increments due" was inflicted. It is seen from the record that vide order dated 23.01.2004, Original Application No.1100 of 2002 was allowed and Transfer Order was quashed by this Tribunal.

3. Learned counsel for the applicant further stated that as nothing was done by the respondents, applicant was constrained to file contempt petition being Contempt Petition No.50 of 2004. On receipt of notice in the said contempt petition, on 17.05.2004 the transfer order dated 08.11.2000 was cancelled by the Contempt Authority and accordingly, applicant was allowed *Corrected* *11-3-09* *to transfer at Bareilly* *to transfer* *to transfer* Learned counsel for the applicant has also invited our intention to the fact that the applicant also filed Original Application No.1189 of 2004. The said O.A. was finally disposed of vide order dated 11.10.2004 directing the respondent no.2 to decide the representation of the applicant dated 30.08.2004, (Annexure A-10 to the said O.A.) within a period of three months from the date of receipt of copy of this order. This representation mainly dealt with the payment of salary of providing intervening period from 13.11.2000 to 19.5.2004.

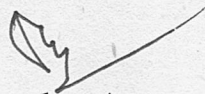
4. Learned counsel for the respondents submitted that this O.A. is barred by Principle of res-judiceta and order II Rule 2, inasmuch as, for the same cause of action applicant has approached this Tribunal again.

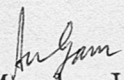
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5. Learned counsel for the applicant vehemently urged that no doubt, the objection of the respondents with regard to the maintainability of the claim on the ground of order 2 Rule 2 C.P.C. may be available, but in our view the plea of 02 Rule 2 would be available before passing the order dated 23.01.2004 in O.A. No.1100 of 2004 and not thereafter. The objection of the respondents is not sustainable in law. It is argued that the respondents must consider the grant of payment of salary for the subsequent period from 23.01.2004 to 19.05.2004.

6. We have given out thoughtful consideration to the pleas advanced by the parties counsel and we are of the considered view that the respondents should have taken a lenient view in the matter, considering the fact of his retirement from service. We find force in submission of learned counsel for applicant that for none of his fault, salary for the period 23.01.2004 to 19.05.2004 have not been given to him. The applicant cannot be held responsible for the lapse and delay caused by the respondents. In any view of the matter, the respondents are liable to pay the salary of the intervening period between 23.1.2004 to 19.05.2004.

7. We accordingly, direct the respondents to consider the case of payment of salary to the applicant for the period 23.1.2004 to 19.05.2004 in accordance with the provisions of Rule within a period of three months from the date of receipt of the copy of the order. No costs.


Member-A


Member-J

/Sushil/