

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.No.407/05

Monday this the 22<sup>nd</sup> day of January 2007

**C O R A M :**

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN  
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER**

Kuruville M George,  
Deputy Commissioner of Income Tax,  
Central Circle I (3), 108, M.G.Road,  
Chennai – 600 034.

...Applicant

(By Advocate Mr.P.Balakrishnan)

**Versus**

1. Union of India represented by Secretary,  
Ministry of Finance, Department of Revenue,  
New Delhi.
2. The Central Board of Direct Taxes,  
North Block, New Delhi  
represented by its Secretary.
3. The Chief Commissioner of Income Tax,  
C.R.Buildings, I.S.Press Road, Cochin – 682 018.
4. The Chief Commissioner of Income Tax,  
Chennai I, 121, Mahatma Gandhi Road,  
Nungambakkam, Chennai – 600 034.

...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil,ACGSC)

This application having been heard on 22<sup>nd</sup> January 2007 the Tribunal on the same day delivered the following :-

**ORDER**

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN**

The applicant herein is working as Deputy Commissioner of Income Tax and is challenging the order of the 2<sup>nd</sup> respondent at Annexure A-1 rejecting his request for sanction of addition pay under FR 49 for the period 2.3.1992 to 2.6.1996 when he held the post of Income Tax Officer and Assistant Controller of Estate Duty, Ernakulam as additional charge.

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2. The respondents in their reply statement have averred that the order dated 23.1.1992 of the Commissioner of Income Tax, Cochin at Annexure R-1 has not been ordered by the competent authority and request for grant of additional remuneration by the applicant has been made very late. According to them the first and foremost condition to be satisfied for applying FR 49 is that there should be a formal order appointing the officer to hold the additional charge of another post. The applicant being a Group B Officer during the period of his claim, the competent authority in this case to pass formal order was the Chief Commissioner of Income Tax.

3. We have heard the counsel for both the sides. Counsel for the applicant has submitted with reference to the contention of the respondents that the additional charge arrangements were ordered by the same authority who appointed the applicant and that if there had been any change in the nature of the statutory authority it was for the respondents to have ensured that the orders were issued by the competent authority. As regards the delay it was explained that the applicant had been holding two additional charges continuously from 1992 onwards and he had thought it fit to apply for the sanction for the additional emoluments in a consolidated manner. In between he had also been transferred under the control of the 4<sup>th</sup> respondent and hence submitted a representation to the 4<sup>th</sup> respondent with a request to take up the matter with the 2<sup>nd</sup> respondent. Counsel also brought to our notice earlier order of this Tribunal in O.A.No.841/02 filed by one Shri.P.K.Vijayakumar, Commissioner of Income Tax and he was directed to hold the post of the Additional Director of Income Tax. The Tribunal had held that if an additional charge has to be ordered by means of a formal appointment by the President of India in terms of the delegation of powers it was for the respondents' department to take up the case and

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that the applicant was entitled to get 10% of the presumptive pay of the additional post for the charge held. The matter <sup>was</sup> ~~is~~ taken up before the Hon'ble High Court in O.P.No.22284/03 and the Hon'ble High Court has set aside the judgment of the Tribunal, but observed in Para 7 of the order as under :-

But, at the same time, it is a fact that in exigencies of service, these incumbents had been asked to perform additional duties in additional posts for which they were competent to officiate. It became necessary in the interest of the department to perform the duties statutorily enjoined on the posts to which they were additionally put in charge to function by their zonal head. In such circumstances, it was incumbent on the Head of the Department to take up the matter with the Central Government and to get approval of such action and regularise their charge arrangement, so that they shall not be denied the benefit arising out of such additional duties performed in the exigencies of situation. This is a matter, therefore, for the 3<sup>rd</sup> petitioner to take up with the petitioners 1 and 2 for appropriate orders immediately.

4. In short what the Hon'ble High Court has stated is that it was incumbent on the Head of the Department to ensure that regular charge arrangements were made and the applicants shall not be denied the benefit if they had performed the duties in the exigencies of situation and directed that petitioner should take up the matter with the respondents' department.

5. The ratio of the above judgment hold good in this application also. It is admitted by the respondents that the applicant had performed additional charge duties during the period under dispute and their objection is only that the order by which he was placed under the additional charge was not issued by the competent authority. If the order was not by a competent authority how the applicant was allowed to discharge all the statutory duties enjoined on these posts and have all the statutory orders issued by him become invalid? Such a contention from the respondents is not acceptable

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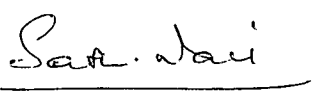
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at all. If at all any technical irregularity had been committed it should have been got ratified by the competent authority. That is the ratio of the High Court judgment. Therefore, in the light of the above ratio of the judgment of the Hon'ble High Court in O.P.No.22284/03 the case of the applicant is also disposed of with a direction that the respondents may pass appropriate orders for ratifying the action taken by the Commissioner of Income Tax, Cochin at Annexure R-1 and the case of the applicant may be disposed off keeping in view the above direction of the Hon'ble High Court.

6. Counsel for the applicant has also submitted that there is some typographical mistake <sup>in</sup> for the period of relief prayed for and that the period is 2.3.1992 to 2.6.1996. Necessary correction may be made by the counsel for the applicant.

(Dated the 22<sup>nd</sup> day of January 2007)

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

  
**SATHI NAIR**  
**VICE CHAIRMAN**

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