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## CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.No.060/00033/2014

Orders pronounced on: 11.8.2014  
(Orders reserved: 25.07.2014)CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**  
**HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

Pawan Kumar Jain, Senior Divisional Accounts Officer (Retired), aged about 61 years, son of Shri Rameshwar Dass Jain and R/o House No. 13432, Street No. 2, Thakur Colony, Bhathinda.

Applicant

By : Mr. S.B. Gautam, Advocate.

Versus

1. Union of India through Comptroller and Auditor General of India,  
10, Bahadurshah Zafar Marg, New Delhi-110124.
2. Accountant General (A&E), Punjab, Sector 17, Chandigarh.

By: Mr. Barjesh Mittal, Advocate.

Respondents

- ✓ 1. Whether the Reporters of local papers may be allowed to see the Judgment?
- ✓ 2. To be referred to the Reporter or not?
- ✓ 3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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**ORDER**  
**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 for issuance of a direction to the respondents to grant him payment @ 10% of presumptive pay of the posts, charge of which was held by the applicant in addition to his own regular post under Rule 49 (iii) of Fundamental Rules.

2. The applicant while working as Divisional Accounts Officer Grade I, was given dual charge of the post of Executive Engineer, Construction Division No.2, PWD B&R Branch, Bathinda, from 09/2007 to 02/2009 and of Executive Engineer, Water Supply and Sanitation Division No.2, Bathinda from 09/2009 to 06/2010, without any extra emoluments. His request for grant of dual charge allowance under FR 49 (iii) was declined on 29.11.2009 on the ground that he was given charge with a stipulation that no extra pay or allowance would be granted to him for holding dual charge. The applicant was again given dual charge for the period from 09/2011 to 05/2012 for different spells without grant of any extra emoluments. The applicant ultimately retired on 31.5.2012. The applicant represented the respondents that he could not be denied extra-allowances permissible under Fundamental Rules, by issuance of executive orders but to no avail.

3. The applicant has placed reliance on Rule 49 (ii) of Fundamental Rules (Annexure A-7) to claim that "where a Government servant is

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formally appointed to hold charge of another post or posts which is or are not in the same office, or which, though in the same office, is or are not in the same cadre/line of promotion, he shall be allowed the pay of the higher post, or of the highest post, if he holds charge of more than two posts, in addition to ten per cent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding (45) days but not exceeding 3 months". The applicant submits that since he performed full duties of another post, he is entitled to additional charge allowance admissible under Fundamental Rules, denial of which under administrative orders is illegal.

4. The respondents submit that O.A. is not maintainable in the present form as applicant has not challenged the order dated 26.11.2009 (A-5) vide which his claim was rejected. Moreover, the Original Application is barred by the law of limitation, delay and laches, particularly section 21 of the Administrative Tribunals Act, 1985. On merit they submit that the claim of applicant is liable to be dismissed in terms of rule 49 (ii) and (v) of Fundamental Rules and in any case there was a specific stipulation in the relevant orders that the dual charge will not carry any additional pay and allowances.

5. We have heard learned counsel for the respondents and perused the material on the file.

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6. It is quite surprising that despite raising of an objection by the respondents in their reply that the applicant has not challenged the order dated 26.11.2009 vide which his claim for grant of additional pay and allowances was declined, he has chosen not to challenge the same either on original side or by amendment of the Original Application. Even the orders passed for grant of additional charge of relevant posts also carried an stipulation that the applicant would not be granted any extra remuneration was adverse to his interest but the applicant, in his wisdom, has chosen not to challenge the same. A litigant who accepts the legality of the orders passed adverse to his interests, cannot be allowed to say that despite existence of such adverse orders, he is entitled to a relief. He would be estopped from claiming any relief unless orders are impugned and he or she is successful in getting the same quashed. One cannot dispute the proposition that authorities cannot amend or supersede statutory rules by administrative instructions, but it may be a good ground to challenge an order passed adverse to the interest of a litigant.

7. We also find merit in the objection taken by the respondents to the extent that the case of action in regard to earlier part of claim arose in 2009 and the Original Application has been filed in 2013, that too without posing a challenge to the relevant order. Reliance in support thereof is placed upon **Union of India Vs. Harnam Singh**, 1993 (2) SCC 162, **Bhup Singh Vs. Union of India & Others**, AIR 1992 SC 1414 and

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Annexure A1

(15)

REGISTERED

To,

*Namita Shekhon*  
Mrs. Namita Shekhon (IAAS),  
Principal Accountant General (A&E),  
Punjab - Chandigarh.

No. 051

Dated 9-7-2012

Subject : - Request for grant of dual charge allowance as admissible under fundamental Rule 49(III).

Most Respected Madam,

It is submitted as under: -

That I P.K. Jain retired as Sr. DAO on 31-05-2012 from Provincial Division, PWD B&R Branch, Bathinda was given dual charge of other divisions as under: -

1. Dual charge from 09/2007 to 02/2009 of Construction Division No. 2, PWD B&R Branch, Bathinda.
2. Dual charge from 09/2009 to 06/2010 of Water Supply & Sanitation Division No. 2, Bathinda.
3. Dual charge from 09/2011 to 31/05/2012 of Water Supply & Sanitation Division No. 1, Bathinda.

Upto 06/2010 I was holding the regular charge of Central Works Division, PWD B&R Branch, Bathinda and thereafter I was holding the regular charge of Provincial Division, PWD B&R BR, Bathinda.

That I requested vide my application dated 19-10-2009 to grant to dual charge allowance under the provision of Rule 49(III) of fundamental Rules. Copy of request letter is enclosed for ready reference.

That the said request dated 19-10-2009 was declined by the Administration vide letter dated 26-11-2009 copy of the same is enclosed for ready reference. The basis of decline my request was that there was stipulation in the office order of assignment of dual charge that no special pay or allowances would be paid and <sup>attached</sup> the provision of FR 49-II and FR 49-V please

That the said letter was rebutted by me vide my letter dated 17-12-2009 justifying the admissibility of dual charge allowance. The executive orders cannot overtake the financial benefits admissible under fundamental Rules, and the attraction FR 49-II & 49-V was not applicable in our case. Copy of this letter is also enclosed for favour of perusal please. That the financial benefit admissible under service rules should not be/cannot be denied through executive orders.

*Attested true by*  
*[Signature]*

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another post. He was simply given a dual charge of a post in his own cadre which eventuality would, to our mind, be covered by stipulation given in sub paras (ii) and (v) of Rule 49 of Fundamental Rules.

9. In the conspectus of the above discussion, this O.A. turns out to be devoid of any merit and barred by time and not maintainable and as such is dismissed.

10. The parties are left to bear their own costs.

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**(UDAY KUMAR VARMA)**  
**MEMBER (A)**

Place: Chandigarh

Dated: 11.8.2014

HC\*