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**(2013) 12 JH CK 0036**  
**In the Jharkhand High Court**  
**Case No : L.P.A. No. 63 of 2013**

Upendra Kumar

APPELLANT

Vs

The Union of India and Others

RESPONDENT

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**Date of Decision :** 04-12-2013

**Acts Referred:**

**Citation :** (2013) 12 JH CK 0036

**Hon'ble Judges :** R. Banumathi, C.J.; Amitav K. Gupta, J

**Bench :** Division Bench

**Advocate :** Sujit Narayan Prasad, for the Appellant; Ashok Singh, CGC, for the Respondent

**Final Decision :** Disposed Off

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## Judgement

1. The instant L.P.A. has been preferred against the order dated 16.01.2013 passed in W.P. (S) No. 4140 of 2006 whereby the petitioner's prayer for seeking more compensation on account of 75 % disability, sustained in Kargil area while facing terrorist as being posted under respondent-Border Security Force in the year 1995 was dismissed. Learned counsel for the appellant submitted that in the similarly situated circumstance, one Constable, T. Kujur who had sustained 65 % disability was granted compensation of Rs. 11,00,556/- while the petitioner was paid a compensation of Rs. 5,37,960/-. It has also been argued by learned counsel that in the counter affidavit filed in the W.P. (S) No. 4140 of 2006, it had been stated that while calculating the compensation of constable T. Kujur, pay plus dearness allowance was included whereas the petitioner was denied the additional dearness allowance, which is a mandatory provision as per Rule 9(21) (a) of the Fundamental Rules and also other emoluments and the said statutory provision cannot be by-passed by an administrative order.

2. On the other hand, learned counsel for the respondents has submitted that there is clear-cut direction contained in letter No. 45/1/2004-P & PW(G) dated 27th January, 2005 issued by the Ministry of Personnel Public Grievances and Pensions, Government of India, wherein it has been stated that dearness pay will

be included in the basic pay while calculating the compensation after 1st April, 2004.

3. In the background of the said submissions and on perusal of records, we find that it is not disputed that the medical examination of the petitioner had taken place on 22nd August, 2001 and with respect to constable T. Kujur, the disability was found to be 100% and his examination had taken place on 24.11.2004 meaning thereby he was covered under the resolution of the Government of India as stated above.

4. On perusal of the impugned order, it also transpires that the petitioner was given opportunity to bring on record the materials to show that his pay shown in the calculation chart was not in accordance with the Rule which he failed to place before the learned Single Judge.

5. According to learned counsel for the appellant as per Rule 9(21)(a) of the Fundamental Rules and sub-clause (i), (ii) and (iii), pay means the amount drawn monthly by a Government servant includes any other amount specially classed as pay by the President. The Rule 9(21)(a) of the Fundamental Rules reads as under:-

21. (a) Pay means the amount drawn monthly by a Government servant as-

(i) the pay, other than special pay or pay granted in view of his personal qualification, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and

(ii) overseas pay, special pay and personal pay; and

(iii) any other emoluments which may be specially classed as pay by the President.

6. The learned counsel for the appellant-petitioner submitted that Rule 9(21)(a) of the Fundamental Rules includes special pay or any other emoluments drawn by the Government employee and there cannot be any administrative order issued for quashing the Fundamental Rules. Therefore, learned counsel submitted that letter bearing No. 45/1/2004-P & PW(G) indicated in page cannot be said to be a valid administrative order.

7. On perusal of the impugned order passed by the learned Single Judge, we find that no such ground was made in the writ petition or any rejoinder was filed before the learned Single Judge after counter was filed by the respondents and, therefore, we do not propose to go into the point raised by the appellant. However, the petitioner-appellant is at liberty to make appropriate representation before the concerned authority with reference to Rule 9(21)(a) of the Fundamental Rules.

8. In the background of the discussions made above, we find no reason to interfere with the impugned order passed by the learned Single Judge. We are

while confirming the order of the learned Single Judge passed in W.P. (S) No. 4140 of 2006, liberated is given to the appellant to make a fresh representation in the light of the submissions made in this appeal. On receipt of such representation, made by the appellant, on the above point, the concerned authority shall consider the same in accordance with law within a period of four months from the date of receipt of copy of such representation along with copy of this order.

With the above observations and directions, this L.P.A. is disposed of.