HANDBOOK ON
LEGAL SYSTEM & PROCEDURES

ADMINISTRATION SECTION
CONTROLLER GENERAL OF DEFENCE ACCOUNTS
WEST BLOCK - V, R.K.PURAM, NEW DELHI-110 066.

PREFACE

The Defence Accounts Department is committed to rendering efficient, correct and prompt service to the Armed Forces. In order to translate this commitment into an everyday reality in the functioning of 962 offices at 249 locations all over the country, the Department has taken a number of steps. These include sensitizing the staff about expectations of the customers, upgrading their skills and providing prompt redressal whenever any instance of deficiency in service comes to notice. While the Department has been able to meet, by and large, exacting standards in performance of mandated functions, instances do happen when internal and external customers take legal recourse for settlement of their grievances.

2. In the last few years, the number of legal cases faced by the Department has increased significantly. The increased litigation is not because of any decline in service delivery but due to quantum jump in Defence budget and resultant transactions handled by the Department. Increased public awareness of one's rights and judicial activism have also contributed to rise in the number of legal cases faced by governmental organizations. As a result, the State is now perhaps the biggest litigant. Such a situation calls for certain amount of legal knowledge on the part of public officers with a view to ensuring that the interests of the Government are fully protected.

3. The education profile of the D.A.D personnel is indeed impressive. However, the number of employees having a formal law qualification is very small. The level of legal knowledge in the Department certainly needs to be improved. Recognizing this, the Department has made conscious efforts to familiarize its manpower with legal procedures and processes through training programmes. The numbers trained so far is, however, not commensurate with the requirement. As a result, most of the DAD offices find themselves inadequately equipped to handle legal cases.

4. The publication of this handbook is an initiative taken to upgrade legal knowledge in the Department. The handbook looks at the legal system and procedures from a layman's point of view. It incorporates most of the topics that our employees need to be familiar with for handling legal cases. Various Government orders & instructions for handling and monitoring legal cases have also been included.

5. It must be added here that this is entirely an in-house effort of the Administration Section of the Headquarters office. The information set out in this publication has been borrowed from various sources. In this regard, the study material on the subject prepared by the Institute of Judicial Training & Research, Lucknow, Institute of Secretarial Training & Management, New Delhi and that available on various Internet sites has been consulted. Suggestions for improving the content and presentation of this publication are welcome.

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CHAPTER - I

INTRODUCTION

1.1 The Judiciary occupies an important place in the Indian federal system. The Constitution has divided their jurisdictions through three Lists: the Union List, the State List and the Concurrent List. However there is always a possibility of disputes between the Centre and the State Governments or between the State Governments. The Judiciary plays a crucial role in such situations. The Constitution of India lays down that the Judiciary would resolve disputes between the Centre and the States or between the States. Moreover, the Judiciary is also responsible for ensuring that the rights of citizens are protected and the powers of the Government do not cross the limits prescribed. An independent Judicial set-up is a must for any Federation. It ensures, on one hand, authentic interpretation of the Constitution and on the other, it resolves disputes, constitutional or otherwise, between the Union and a unit or units of the Federation. Unlike other federations, India has a single, unified judicial system for the entire country. The Supreme Court is at the top of the judicial system. There are High Courts at the State level.

1.2 Central Administrative Tribunals have been set up for providing speedy and inexpensive relief to persons in services and posts under the Union, by adjudicating in the matter of their complaints and grievances on recruitment and conditions of service.

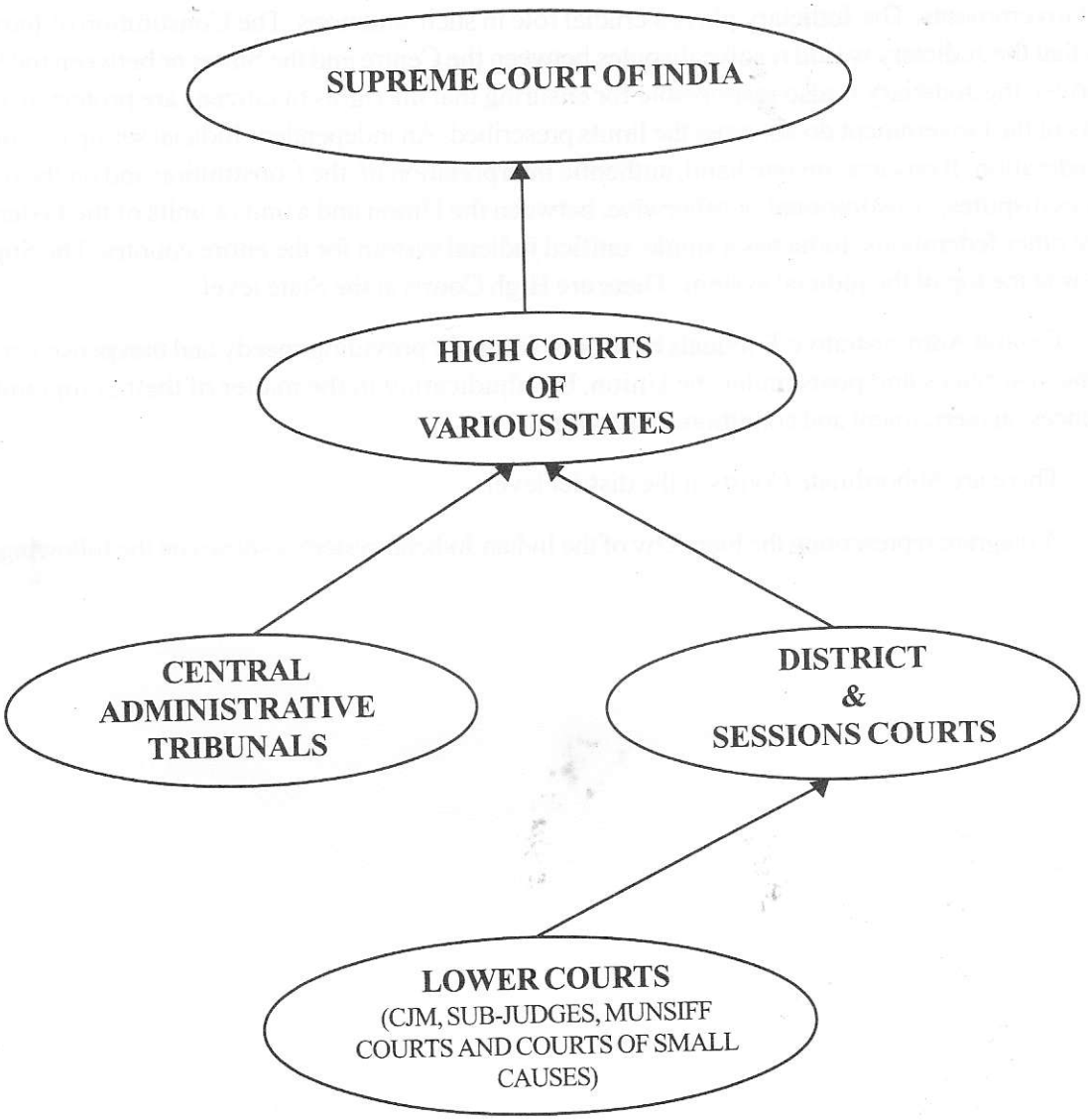
There are Subordinate Courts at the district level.

A diagram representing the hierarchy of the Indian Judicial system is shown on the following page.

CHAPTER - II

JUDICIAL SYSTEM IN INDIA

2.1 The heirarchy of the Indian judicial System is as shown below :



2.2 DISTRICT AND SUBORDINATE COURTS

2.2.1 The organisation and functions of the subordinate courts throughout the country are uniform, except with minor local variations. The entire subordinate courts function under the supervision of the concerned High Court. In every district there are civil and criminal courts. The Court of the District Judge is the highest court in a district. The District Judge deals with civil cases and the Sessions Judge deals with criminal cases. He can award capital punishment subject to the approval of the High Court. District Judge/Sessions Judge also hears appeals against the decisions of the Lower Courts. Besides these courts, there are courts of sub-judges, munsiff courts and courts of small causes. There are also courts of second class and third class magistrates.

2.2.2 The judges of the District Courts are appointed by the Governor of the concerned State in consultation with the High Court. A person who has been a pleader or an advocate for seven years or an officer in the judicial service of the Union or the State is eligible for appointment. Regarding positions other than those of district judges, the Governor in consultation with the High Court and the State Public Service Commission makes appointments. At least three years experience as an advocate or a pleader is one of the essential qualifications for these appointments.

2.2.3 The District Courts hear appeals against decisions of sub-judges. It hears cases relating to the disputes of property, marriage and divorce. The civil courts exercise jurisdiction over such matters as guardianship of minors and lunatics.

2.3 CENTRAL ADMINISTRATIVE TRIBUNALS

Introduction

2.3.1 Central Administrative Tribunals were set up under Article 323-A of the Constitution of India with Benches at several places covering the entire country. The Benches started functioning from 1985. The objective has been to satisfy the long-felt need to have a machinery, independent of existing judiciary, for providing speedy and inexpensive relief for persons in services and posts under the Union, by adjudicating in the matter of their complaints and grievances on recruitment and conditions of service. Earlier, it was left to the aggrieved to move the High Court of Judicature under Article 226 of the Constitution of India and since the High Courts were dealing with all types of cases, there was an inordinate delay in settlement of these Writs. After the decision of the High Court, some more years were spent to go through for an appeal in the Supreme Court.

2.3.2 The Central Administrative Tribunal, under the Administrative Tribunals Act, 1985, is empowered to exercise all jurisdiction, powers and authority exercisable by all courts, except the High Court in Writ jurisdiction and Hon'ble Supreme Court, in relation to all service matters.

2.3.3 **Jurisdiction, powers and authority of the Central Administrative Tribunal**

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to –

(a) Recruitment and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected

with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) All service matters concerning –

i) a member of any All-India Service; or

ii) a person [not being a member of an All-India Service or a person referred to in clause(c)] appointed to any civil service of the Union or any civil post under the Union; or

iii) a civilian [not being a member of an All-India Service or a person referred to in clause(c)] appointed to any defence service or a post connected with defence.

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

Explanation – For the removal of doubts, it is hereby declared that references to 'Union' in this sub-section shall be construed as including references also to a Union territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to Corporations or Societies owned or controlled by Government, not being a local or other authority or Corporation or Society controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or Corporations or Societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or Corporation or Societies, all the jurisdiction, powers and authority exercisable immediately before that date by all courts except the Supreme Court in relation to –

(a) recruitment, and matters concerning recruitment, to any service or post in connection

with the affairs of such local or other authority or Corporation or Society; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section(1)] appointed to any service or post in connection with the affairs of such local or other authority or Corporation or Society and pertaining to the service of such person in connection with such affairs.

A special Bench, consisting of seven judges of the Supreme Court, has ruled that the decisions of the CAT will be subject to the scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls.

Table of jurisdiction of Benches of Central Administrative Tribunal

Sl. No	Bench	Jurisdiction	Postal Address
1	Principal Bench New Delhi	National Capital Territory of Delhi	Copernicus Marg, New Delhi-110001
2	Ahmedabad	State of Gujarat	Opposite Sardar Patel Stadium, Navrangpura, Ahmedabad-380009
3	Allahabad	(i) State of Uttar Pradesh excluding Districts mentioned against Serial No 4 under the jurisdiction of Lucknow Bench (ii) State of Uttaranchal	23-A, Thorn Hill Road, Post Bag No. 013, Allahabad-211001
4	Lucknow	Districts of Lucknow, Hardoi, Kheri, Rai Bareli, Sitapur, Unnao, Faizabad, Ambedkar Nagar, Bahraich, Shravasti, Barabanki, Gonda, Balarampur, Partapgarh, Sultanpur in the State of Uttar Pradesh	Gandhi Bhawan (Opposite Residency),Gandhi Smarak Nidhi,Lucknow-266001
5	Bangalore	State of Karnataka	2nd Floor Commercial Complex (BDA), Indira Nagar, Bangalore-560038
6	Chandigarh	(i) State of Jammu and Kashmir	Opposite Hotel Shivalik View, Sector 17,

		(ii) State of Haryana (iii) State of Himachal Pradesh (iv) State of Punjab (v) Union Territory of Chandigarh	Chandigarh-160017
7	Chennai	(i) State of TamilNadu (ii) Union Territory of Pondicherry	Additional City Civil Court Building, High Court Campus, Chennai-600104
8	Cuttack	State of Orissa	Rajaswa Bhawan, 4th Floor, Cuttack-753002
9	Earnakulam	(i) State of Kerala (ii) Union Territory of Lakshadweep	Kandomkulathy Towers, 5th 6th Floor, Opposite Maharaja College, MG Road, Ernakulam, Cochin-682001
10	Guwahati	(i) State of Assam (ii) State of Manipur (iii) State of Meghalaya (iv) State of Nagaland (v) State of Tripura (vi) State of Arunachal Pradesh (vii) State of Mizoram	Rajgarh Road, Shillong Road (Bhangagarh), Post Box No. 58, GPO, Guwahati-781005
11	Hyderabad	State of Andhra Pradesh	New Insurance Building Complex, 6th Floor, Tilak Marg (Abids), Post Box No. 07, Hyderabad-500001
12	Jabalpur	(i) State of Madhya Pradesh (ii) State of Chattisgarh	Caravs Building, 15 Civil Lines Jabalpur-482001
13	Jaipur	Districts of Ajmer, Alwar, Baran, Bharatpur, Bundi, Dausa, Dholpur, Jaipur, Jhalawar, Jhunjhunu, Kota, Sawai Madhopur, Sikar, Tonk and Karauli in the State of Rajasthan	C-42 Bhagat Watika, Civil Lines, Raj Bhavan Road, Jaipur-302006

14	Jodhpur	State of Rajasthan excluding the Districts mentioned against Serial No 13 under the jurisdiction of Jaipur Bench	House No. 69, 1st Polo (PAOTA), Post Box No.619,Jodhpur-342006
15.	Kolkata	(i) State of Sikkim (ii) State of West Bengal (iii) Union Territory of Andaman and Nicobar Islands	CGO Complex, Nizam's Place Compound, 2nd MSO Building, 11th – 12th Floor, 234/4, AJC Bose Road, Kolkata-700020
16	Mumbai	(i) State of Maharashtra (ii) State of Goa (iii) Union Territory of Dadra and Nagar Haveli (iv) Union Territory of Daman and Diu	Gulestan Building, No. 6, 3rd-4th Floor, Prescot Road, Near Mumbai Gymkhana Club (Fort) Mumbai-400001
17	Patna	(i) State of Bihar (ii) State of Jharkhand	88-A, BM Enterprises, Sri Krishna Nagar, Patna-800001

2.3.4 Composition

Each Tribunal consists of a Vice-Chairman in addition to Judicial/Administrative Members to the extent necessary. The Principal Bench located at New Delhi is the only Bench that is headed by a Chairman. It also has a Vice-Chairman, besides Judicial/Administrative Members. The Administrative Members possess necessary expertise and familiarity with administrative procedures and rules, to deal with service problems in a satisfactory way by finding out the facts and knowing relevant rules.

2.3.5 Service Matter

Service matter has been defined to mean all matters relating to conditions of service, viz., -

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters;

(v) any other matter.

The definition is quite expansive and of wide connotation and has been held to cover other incidental and ancillary matters, like-

(i) transfer;

(ii) allotment of quarters;

(iii) eviction proceedings under Public Premises Act;

(iv) determination of marital status for purposes of family pension.

2.3.6 Application

In the application, against the relevant column, the applicant has to set out the facts of the case in a chronological order, each paragraph containing as nearly as possible, a separate issue or fact.

The grounds for relief with legal provision are also to be furnished concisely under the different heads and numbered serially.

The application should also contain prayer of applicant specifying relief sought for, explaining grounds for such relief and legal provision, if any, relied upon.

The application should be based upon a single cause of action and may seek one or more reliefs, provided that they are consequential to one another.

Interim relief, if any prayed for, pending final decision on the application, should be incorporated in application itself.

2.3.7 Form and contents

Every application is to be typed in double space on one side on thick paper of good quality (A-4 size) and must be accompanied by the following documents; -

(i) an attested copy of the order against which the application is filed;

(ii) copies of documents relied upon by the applicant and referred to in application duly attested;

(iii) an index of documents;

(iv) "Vakalatnama" duly executed in favour of legal practitioner filing the application;

(v) particulars of Bank Draft/Postal Order towards filing fee

The application should be presented in triplicate in the following two compilations

(i) Compilation No. 1. -application along with the impugned order.

(ii) Compilation No. 2. -all other documents and annexures referred to in the application in a paper-book form.

When the number of respondents is more than one, the applicant should furnish extra copies equal to the number of the respondents together with unused file-size envelopes bearing the full address of each respondent.

2.3.8 Filing fee

A fixed fee of Rs. 50/- in the form of demand draft/postal-order has to be paid along with each application, filed individually, jointly or in a representative capacity.

The Tribunal has power to exempt the payment of fee if it is satisfied that applicant is unable to pay the same due to his financial condition. '

2.3.9 Filing of Application

A person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance under Section 19 of the Act, in the prescribed form, giving details like number and the authority which has passed the order, against which the application is made.

Section 19 of Administrative Tribunal Act.

2.3.10 Applications to the Tribunals

1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for redressal of his grievances.

Explanation- For the purposes of this sub-section, "order" means an order made-

(a) by the Government or a local or other authority within the territory of India or under control of the Government of India or by any Corporation or Society owned or controlled by the Government: or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or Corporation or Society referred to in clause(a).

2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees) in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government.

3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.

4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter thereafter be entertained under such rules.

2.3.11 Status of Applicant

Normally only an individual person has to file an application. The Tribunal may, however, permit more than one person to join together and file a single application, if it is satisfied, having regard to the cause of action and the nature of relief prayed for, that have a common interest in the matter. A separate application has to be filed seeking necessary permission in this regard.

Such permission is also granted to an association representing members desirous of joining in a single application and having a common cause of action.

2.3.12 **Right of applicant to take assistance of legal practitioner and of Government, etc., to appoint Presenting Officers**

(1) A person making an application to a Tribunal under this Act may either appear in person or take assistance of a legal practitioner of his choice to present his case before the Tribunal.

(2) The Central Government or a State Government or a local or other authority or Corporation or Society to which the provisions of sub-section (3) of Section 14 or sub-section (3) of Section 15 apply, may authorize one or more legal practitioners or any of its officers to act as Presenting Officers and every person so authorized by it may present its case with respect to any application before a Tribunal.

2.3.13 **Exhausting remedies**

The Act specifically lays down that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all remedies available to him under the relevant service rules as to redressal of grievance. An applicant is deemed to have availed all remedies available to him, if final order has been passed on his appeal/representation by the highest authority competent to pass such an order under relevant rules/orders or if no such order is passed, after lapse of a period of six months from the date of such appeal/representation having been made.

The expression "ordinarily" in the context means generally and not always or in all cases. It indicates that the Tribunal is vested with some discretion in the matter, which is to be exercised sparingly in extraordinary circumstances.

2.3.14 **Section 20 of Administrative Tribunal Act.**

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances -

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation was made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way

of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

2.3.15 Limitation

(i) An application before the Tribunal has to be filed within one year from the date on which the final order has been made. Where an appeal/representation has been submitted by the person and the authority competent to pass final order has not passed the said order, application has to be filed after expiry of a period of six months from the submission of such appeal/representation and within one year from the date of expiry of the said period of six months. The application form itself provides for a declaration from the applicant that the application is within the limitation period prescribed.

(ii) The Act provides for admission of an application for disposal, in relaxation of the above limitation, if sufficient cause is shown for not making the application within such period. A separate application is required to be filed for condonation of delay, supported by an affidavit.

(iii) The period of limitation is reckoned with reference to the date of initial final order and is not revived by making repeated representation to the same authority.

2.3.16 Section 21 of Administrative Tribunal Act.

(1) A Tribunal shall not admit an application-

(a) in a case where a final order such as is mentioned in Clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in Clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) The grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or, as the case may be, Clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in Clause (a) or Clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if

the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

2.3.17 Place of filing

(i) An application is ordinarily to be filed with the Registrar of the Bench of the Tribunal within whose jurisdiction the applicant is for the time being posted or the cause of action has arisen.

(ii) However, with the permission of the Chairman of the Principal Bench, New Delhi, an application may be filed there, heard and disposed of.

(iii) The application form itself provides for a declaration to be furnished by the applicant that the subject matter, against which he wants redressal, is within the jurisdiction of the Tribunal, where he filed the application.

2.3.18 Power of Chairman to transfer cases from one Bench to another: -

The Chairman may transfer any case pending before one Bench, for disposal, to any other Bench on the application of any of the parties, after notice to the parties and after hearing them, as he may desire to be heard, or on his own motion, without such notice.

2.3.19 Scrutiny of application

On scrutiny of the application at the registry, the same, if found to be in order, will be duly registered, numbered and placed before the Bench for admission. Defects, if any, noticed on scrutiny will be got rectified before registration.

2.3.20 Terms of Notices

After hearing the petitioner, the Tribunal if finds merit prima-facie in the case passes an order of issuing notice to the respondent with the direction that the respondent should appear on the given date and should file its reply and all the supported documents.

2.3.21 Reply of Respondent

(i) Respondent Ministries/Departments should ensure that notice received from the Tribunal are attended to and complied with promptly. It is enjoined that whenever notices are received from the Tribunal, the Department concerned should immediately get in touch with the Senior Standing Counsel of the concerned Bench for handling the case. He should be fully briefed in the matter so that he files the written statement in reply to the application within the time allowed, after the same is duly vetted by Min of Law & Justice.

(ii) In the reply, the respondent has to specifically admit, deny or explain the fact stated by the applicant in his application and also state such additional facts as may be found necessary for a just decision of the case. The reply to the application should be filed in triplicate along with the documents relied upon in paper-book form. One copy of the reply along with the paper book should be furnished to the applicant or his legal practitioner.

2.3.22 Posting of cases for admission/orders before the bench

(i) Subject to the orders of the Chairman/Vice-Chairman of the concerned bench all registered applications-petitions shall be posted for admission orders before the appropriate bench on the next working

day. The notice of posting shall be given by notifying in the daily cause list for the day.

(ii) Appendix I and Appendix II to the CAT rules which may be amended from time to time specify about the nature of cases to be heard by single member bench or larger bench. It is very important to verify that the bench hearing the particular matter has been notified to hear such matters as per Appendix I & II.

2.3.23 *Ex parte* Hearing

(i) If on the date of hearing, the applicant appears and the respondent Department/Ministry is not represented, the Tribunal may adjourn the hearing or hear and decide the application ex parte. In such an event, the respondent may apply to the Tribunal for setting aside the order, giving sufficient cause to the satisfaction of the Tribunal and the Tribunal may set aside the ex parte hearing and hear the case afresh.

(ii) It is not obligatory for the Tribunal to dismiss an application for default if the applicant is not present or represented when the, matter is called for hearing. In the absence of the applicant, the Tribunal can hear the Counsel for the respondent, peruse the records placed before it, consider the applicant's grievance with reference to the grounds urged by him in his application and then decide the application on merits.

2.3.24 Decision by majority

If the Members of a Bench differ in opinion on any point/points, the point/points will be decided according to the opinion of the majority. But, if the Members are equally divided, they will state the point/points on which they differ and make a reference to the Chairman, who will either hear the point/points himself or refer the case for hearing by one or more of the other Members and decide according to the opinion of the majority of the Members who heard the case, including those who first heard it.

2.3.25 Decision by Tribunal

The Tribunal will take a decision on perusal of the documents filed by both the sides, written representations made and oral arguments advanced at the time of the hearing on behalf of both the sides. If necessary, it can hold an enquiry as provided in the Act, the Tribunal having the same powers as that of a Civil Court.

2.3.26 Action on judgement

(i) Immediately on the receipt of judgment/order of the tribunal the said judgment is required to be gone through and to be verified that there may not be any factual or legal error committed by the tribunal while passing the order. It is open to the Department to seek review of such order/judgment where any apparent factual error has been committed. Such review application is maintainable before the same tribunal but if any legal error has been committed and it is found that the order/judgement is passed against the settled principle of law such judgement should be challenged by way of writ petition under Article 226 of the Constitution before the concerned High Court.

(ii) If the competent authority finds that neither there is any factual error nor there is any legal error, then the order of the tribunal should be complied with immediately but not later than the time limit prescribed in the order or within six months of the receipt of order where no such time limit is indicated. It is important to note that failure to implement the order, unless the same is challenged and stay of operation of the order is obtained, in time may give rise to cause of action for initiating contempt proceedings.

(iii) If within the given time neither the order is challenged nor due to some difficulties or departmental delays the same is implemented it is always advisable to approach the tribunal with a prayer to extend the time for implementing the order in this way there will not be any risk of facing contempt proceedings.

2.3.27 **Provision of Review**

(i) If the applicant or the respondent is not satisfied with the judgement recorded, it is open to them to seek review of the judgement by filing a petition within thirty days of the communication of the order either by hand to the party or to his counsel by sending a true-copy of the order by registered post properly addressed and prepaid.

(ii) A Review petition will lie only when there is a glaring omission, patent mistake or error in the judgement. Unless otherwise ordered, a review petition will be disposed by the same Bench that passed the order and by circulation, which may either dismiss the petition or direct issue of notice to the opposite party. Once a revision petition is disposed of, no petition for further review can be filed.

2.3.28 **Powers of Tribunal**

(i) The power conferred on the Tribunal by Section 22 of the Act is very wide. The Tribunal is not bound by the procedure laid down by the Code of Civil Procedure or the Rules of Evidence contained in the Evidence Act. The Tribunal is primarily bound by the principles of natural justice and the rules made by the Central Government. It could adopt inquisitional procedure also to meet the ends of justice, without however, offending the principles of natural justice.

(ii) The concept of natural justice has undergone a great deal of change in recent years. Natural justice demands or requires a fair trial; an authority should act judiciously, meaning not arbitrarily or capriciously, but justly and fairly.

(iii) The Tribunal can decide cases on the basis of evidence taken on affidavits and need not take oral evidence. The Tribunal is entitled to grant such relief, which may be warranted on the facts of the case before it.

(iv) In the matter relating to disciplinary proceeding, it has been held that the Tribunal cannot go into the basic decision, that is, the nature of penalty imposed. It can only interfere in a case just to see whether-

(i) statutory provisions or rules prescribing the mode of enquiry were disregarded;

(ii) rules of natural justice were violated;

(iii) there was no evidence, that is, punishment has been imposed in the absence of supporting evidence. If there are some legal evidences on which the findings can be based, the Tribunal cannot go into the adequacy or reliability of the evidence, even if it was of the view that on the same evidence, its conclusion may have been different.

(iv) consideration extraneous to the evidence or the merits of the case, taken into account; and

(v) the conclusion was so wholly arbitrary and capricious that no reasonable person could have easily arrived at the conclusion.

Section 22 of Administrative Tribunal Act.

2.3.29 Procedure and powers of Tribunals

(1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of place and time of its inquiry and deciding whether to sit in public or in private.

(2) A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representation and after hearing such oral arguments, as may be advanced.

(3) A Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely: -

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning of any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or, documents;

(f) reviewing its decisions;

(g) dismissing a representation for default or deciding it ex parte;

(h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and any other matter which may be prescribed by the Central Government.

2.3.30 Power to punish for contempt

A Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971, shall have effect subject to the modifications that –

a) the references therein to a High Court shall be construed as including a reference to such Tribunal;

b) the references to the Advocate – General in Section 15 of the said Act shall be construed-

(i) in relation to the Central Administrative Tribunal, as a reference to the Attorney–General or the Solicitor-General or the Additional Solicitor-General; and

(ii) in relation to an Administrative Tribunal for a State or a Joint Administrative Tribunal

for two or more States, as a reference to the Advocate-General of the State or any of the States for which such Tribunal has been established.

2.3.31 Distribution of business amongst the Benches

(1) Where, any Benches of a Tribunal are constituted, the appropriate Government may, from time to time, by notification, make provisions as to the distribution of the business of the Tribunal amongst the Benches and specify the matter, which may be dealt with by each Bench.

(2) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench of a Tribunal, the decision of the Chairman thereon shall be final.

Explanation – For the removal of doubts, it is hereby declared that the expression 'matter' includes applications under Section 19.

2.3.32 Conditions as to making of interim orders

(i) No interim order shall be made on, or in any proceedings relating to, an application unless:-

(a) Copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made and

(b) opportunity is given to such party to be heard in the matter.

(ii) The Tribunal may dispense with the requirement and make an interim order as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary to do so for preventing any loss being caused to the applicant which cannot be adequately compensated in money but any such interim order shall, if it is not sooner vacated, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the Tribunal has continued the operation of the interim order.

2.3.33 The Central Administrative Tribunal (Contempt of Courts) Rules, 1992

GSR 757 (E)-In exercise of powers conferred by section 23 of the Contempt of Courts Act, 1971 (70 of 1971), read with Section 17 of the Administrative Tribunals Act, 1985 (Act 13 of 1985), and all other powers enabling it in this behalf and in supersession of all rules on the subject, the Central Administrative Tribunal hereby makes the following rules to regulate the proceedings under the said Act-

1. **Short title and commencement.** -(i) These rules may be called 'Contempt of Courts (CAT) Rules, 1992',

(ii) They shall come into force on the date of their publication in the Official Gazette.

3. **Form of Motion**-Every motion for initiating action for contempt of the Tribunal shall be in the form of a petition described as 'Contempt Petition (Civil)' in respect of Civil Contempt and 'Contempt Petition (Criminal)' in respect of Criminal Contempt.

4. **Parties to the Proceedings**-The party who presents the petition shall be described as the 'Petitioner' and the alleged contemner shall be described as the 'Respondent'.

5. **Contents of the Petition**- The petition shall set out the following particulars; -

(i) (a) Name (including as far as possible the name of the father/mother/ husband), age, occupation and address of-

(i) the petitioner; and

(ii) the respondent

If the alleged contemner is an officer, he shall be described by name and designation.

(b) provision of the Act invoked and the nature of the contempt, 'Civil' or 'Criminal';

(c) the grounds and material facts constituting the alleged contempt including the date of alleged contempt, divided into paragraphs, numbered consecutively, along with supporting documents or certified/Photostat (attested) copies of the originals thereof;

(d) the nature of the order sought from the Tribunal;

(e) if a petition has previously been made by him on the same facts, the details, particulars and the result thereof;

(f) the petition shall be supported by an affidavit verifying the facts relied upon except when the motion is by the Attorney General or the Solicitor General or the Additional Solicitor General;

(g) every petition shall be signed by the petitioner and his Advocate, if any, and shall show the place and date;

(h) draft charges shall be enclosed in a separate sheet;

(i) in the case of 'Civil Contempt', certified copy of the judgment, decree, order, writ or undertaking alleged to have been disobeyed shall be filed along with the petition;

(j) where the petitioner relies upon any other documents in his possession, or power, he shall file them along with the petition;

(ii) in the case of 'criminal contempt' of the Tribunal, other than a contempt referred to in Section 14 of the Act, the petitioner shall state whether he has obtained the consent of the Attorney General or the Solicitor-General or the Additional Solicitor General and if so, produce the same, if not the reasons thereof;

(iii) the petitioner shall file three complete sets of the petition including the annexures in paper book form, duly indexed and paginated. Where the number of respondents is more than one, equal number of extra paper books shall be filed;

(iv) No fee shall be payable on a petition or any document filed in the proceedings.

6. **Taking cognizance**

(i) Every proceeding for contempt shall be dealt with by a Bench of not less than two Members;

(ii) Provided where the contempt is alleged to have been committed in view of presence or hearing of the Member(s), the same shall be dealt with by the Member(s) in accordance with Section 14 of the Act.

7. **Initiation of proceedings**

(i) Every petition for 'Civil Contempt' made in accordance with these rules shall be scrutinized by the Registrar, registered and numbered in the Registry and then placed before the Bench for preliminary hearing.

(ii) Every petition for 'criminal contempt' made in accordance with these rules and every information other than a petition, for initiating for action for criminal contempt under the Act on being scrutinized by the Registrar shall first be placed on the administrative side before the Chairman in the case of the Principal Bench and the concerned vice-Chairman in the case of other Benches or such other Member as may be designated by him for this purpose and if he considers it expedient and proper to take action under the Act, the said petition or information shall be registered and numbered in the Registry and placed before the Bench for preliminary hearing.

(iii) When suo motu action is taken, the statement of facts constituting the alleged contempt and copy of the draft charges shall be prepared and signed by the Registrar before placing them for preliminary hearing.

8. **Preliminary hearing and Notice**

(i) The Bench, if satisfied that a prima facie case has been made out, may direct issue of notice to the respondent; otherwise, it shall dismiss the petition or drop the proceedings.

(ii) The notice shall be accompanied by a copy of the petition or information, and annexures, if any, thereto.

(iii) Service of notice shall be effected in the manner specified in the Central Administrative Tribunal (Procedure) Rules, 1987 or in such other manner as may be directed by the Bench.

9. **Compelling attendance**

The Tribunal may, if it has reason to believe, that the respondent is absconding or is otherwise evading service of notice, or has failed to appear in person in pursuance of the notice, direct a warrant, bailable or non-bailable, for his arrest, addressed to one or more Police Officers or may order attachment of property belonging to such person. The warrant and the writ of attachment shall be issued under the signature of the Registrar. The warrant shall be executed as far as may be, in the manner provided for execution of warrants under the Code.

10. **Appearance of the Respondent**

Unless ordered otherwise by the Tribunal, whenever a notice is issued under these rules, the Respondent shall appear in person in the case of a 'criminal contempt' and in person or through an

advocate in the case of 'civil contempt', at the time and place specified in the notice and continue to attend on subsequent dates to which the petition is posted.

11. **Reply by the respondent**

The Respondent may file his reply duly supported by an affidavit on or before the first date of hearing or within such extended time as may be granted by the Tribunal.

12. **Right to be defended by an Advocate**

Every person against whom proceedings are initiated under the Act, may as of right be defended by an Advocate of his choice.

13. **Hearing of the case and trial**

Upon consideration of the reply filed by the Respondent and after hearing the parties:-

(a) if the respondent has tendered an unconditional apology after admitting that he has committed the contempt, the Tribunal may proceed to pass such orders as it deems fit;

(b) if the respondent does not admit that he has committed contempt, the Tribunal may:-

(i) if it is satisfied that there is a prima facie case, proceed to frame the charge.

(ii) drop the proceedings and discharge the respondent, if it is satisfied that there is no prima facie case, or that it is not expedient to proceed;

(c) the respondent shall be furnished with a copy of the charge framed, which shall be read over and explained to the respondent. The Tribunal shall then record his plea, if any;

(d) if the respondent pleads guilty, the tribunal may adjudge him guilty and proceed to pass such sentence as it deems fit;

(e) if the respondent pleads not guilty, the case maybe taken up for trial on the same day or posted to any subsequent date as may be directed by the Tribunal.

14. **Assistance in conduct of proceedings**

The Attorney-General/Solicitor-General/Additional Solicitor-General, or any other Advocate as may be designated by the Tribunal shall appear and assist the Tribunal in the conduct of the proceedings against the respondent.

15. **Execution of sentence**

If the respondent is found guilty and is sentenced to imprisonment other than imprisonment till rising of the Tribunal, a warrant of commitment and detention shall be made out under the signature of the Registrar. Every such warrant shall remain in force until it is executed or cancelled by order of the Tribunal. The Superintendent of Jail specified in the order shall, in pursuance of the warrant, detain the contemner in custody for the period specified therein subject to such further direction as the Tribunal may give.

16. **Apology at any stage of the proceedings: -**

(i) If at any time during the pendency of the proceedings, the contemner tenders an apology, the same shall be placed expeditiously for orders of the Bench.

(ii) If the Tribunal accepts the apology, further proceedings shall be dropped.

2.4 HIGH COURTS

2.4.1 INTRODUCTION

(i) India at present has 28 States and 7 Union Territories. The Constitution of India provides for one High Court for every federating State in the country. The Parliament has, however been given power to put even more States under one High Court. It all depends on the area and the population that a High Court has to serve and the amount of work it has to handle. For example, there is only one High Court for the two States of Punjab and Haryana. Similarly, Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Tripura have only one High Court.

(ii) The High Court consists of a Chief Justice and some other judges appointed by the President of India. The strength of Judges in the High Courts varies from State to State.

(iii) The High Courts have three types of jurisdiction. These are original, appellate and administrative. Under the original jurisdiction, it has power to issue directions, orders including writs to any authority and any Government within its jurisdiction against the violation of the statutory/fundamental rights of citizens. Petitions challenging the election of a Member of Parliament or a State Legislature or a local body can be filed in the High Court of the concerned State. It can also try civil and criminal cases. The appellate jurisdiction of the High Court includes the power to hear appeals about civil and criminal cases against the decisions of lower courts. Under its administrative jurisdiction, it has authority to supervise the working of all Subordinate Courts/Tribunals. The High Court also is a Court of Record and has the power to punish for contempt of court.

(iv) Article 214 to 231 of the Constitution of India deals with the powers & functioning of High Courts, appointment/removal of judges, etc. The important Articles of the Constitution are reproduced in the succeeding pages.

THE HIGH COURTS IN STATES

2.4.2 Relevant provisions in Constitution

Article 214. **High Courts for States**: - There shall be a High Court for each State.

Status of High Court: - All the High Courts have the same status under the Constitution. Judges of the different High Courts also belong to the same family, even though there may be slight variations in the authorities that are to be consulted at the time of their appointment.

But they do not constitute anything like a single All India cadre. Each Judge is appointed to a particular High Court and may be transferred to another High Court only by virtue of the express provision in Art. 222.

Article 215. **High Courts to be Courts of record**: - Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Article 216. **Constitution of High Courts:** - Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint.

Article 217. **Appointment and conditions of the office of a Judge of a High Court**: - Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court and shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of sixty-two years.

Article 220. **Restriction on practice after being a permanent Judge**: - No person who, after the commencement of this Constitution, has held office as a permanent Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts.

Article 226. **Power of High Courts to issue certain writs**:- Notwithstanding anything in Article 32, every High Court shall have powers, throughout the territories in relation to which it exercised jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including (writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by part III and for any other purpose.)

Article 227. **Power of superintendence over all courts by High Court**:

(1) Every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may

a) Call for returns from such courts.

b) Make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

c) Prescribe forms in which the books, entries and accounts shall be kept by the officers of any such court.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this Article shall be deemed to confer on High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

It is now settled that the power of 'superintendence' conferred upon the High Court by Art.227 is not confined to administrative superintendence only, but includes the power of judicial revision also, even where no appeal or revision lies to the High Court under the ordinary law.

This power involves a duty on the High Court to keep the inferior Court and tribunals within the bounds of their authority and to see that they do, what their duty requires and that they do it in a legal manner.

But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law of justice where grave injustice would be done unless the High Court interferes.

Thus, where an appellate authority had ample revisional authority, the order of such authority would not be set aside (under Art.227) where such authority, on appeal, quashed a decision of an inferior authority, which was without jurisdiction, even though appeal was incompetent.

The power would not be exercised by the High Court to substitute its own judgement whether on a question of a fact or of law, in place of that of the Subordinate Courts, or to correct an error not being an error of law apparent on the face of the record.

In the exercise of jurisdiction under Art.227, the High Court can set aside or ignore the findings of facts of an inferior Court or Tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the Court or Tribunal has come to, or, in other words, it is a finding which was perverse in law. Except to this limited extent, the High Court has no jurisdiction to interfere with the findings of fact.

This means that the High Court can interfere, under Art.227, in cases of –

(a) Erroneous assumption or excess of jurisdiction.

(b) Refusal to exercise jurisdiction.

(c) Error of law apparent on the face of the record, as distinguished from a mere mistake of law or error of law relating to jurisdiction.

(d) Violation of the principles of natural justice.

(e) Arbitrary or capricious exercise of authority, of discretion.

(f) Arriving at a finding which is perverse or based on no material.

(g) A patent or flagrant error in procedure.

(h) Order resulting in manifest injustice.

Article 228. **Transfer of certain cases to High Court: -** If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, (it shall withdraw the case and may)

(a) either dispose of the case itself, or

(b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

2.4.3 Jurisdiction over Tribunals

The High Court may quash the order or decision of an inferior Tribunal on the following grounds –

(a) That the impugned order or decision is without jurisdiction, or against the principles of natural justice, or involves non-exercise of jurisdiction or a grave dereliction of duty or flagrant violation of the law as distinguished from a merely erroneous decision of fact or law or patent irregularity in procedure or an error of law apparent on the face of the record, or that the finding is 'perverse', being founded on no material whatever.

(b) That the exercise of the jurisdiction under Art.227 does not amount to exercising the power of appeal or revision on question of act or of law, not affecting jurisdiction.

On the other hand, the power under Art.227 will not be exercised in cases, like the following:

i) Where the only question involved is one of interpretation of a deed.

ii) On questions of admission or rejection of a particular piece of evidence, even though the question may be of every day recurrence.

iii) To correct an erroneous exercise of jurisdiction, as a Court of revision.

iv) To set aside an intra vires finding of fact, except where it is founded on no material whatsoever, or perverse.

v) To correct an error of law, not being an error apparent on the face of the record.

vi) To interfere with the intra vires exercise of a discretionary power unless it is violative of the principles of natural justice.

vii) To interfere with the decision of an Industrial Court on a merely technical ground which would not advance substantial social justice.

Article 165. **The Advocate-General for the States**

1. The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.

2. It shall be the duty of the Advocate-General to give advice to the government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

3. The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

2.4.4 Procedure before High Court

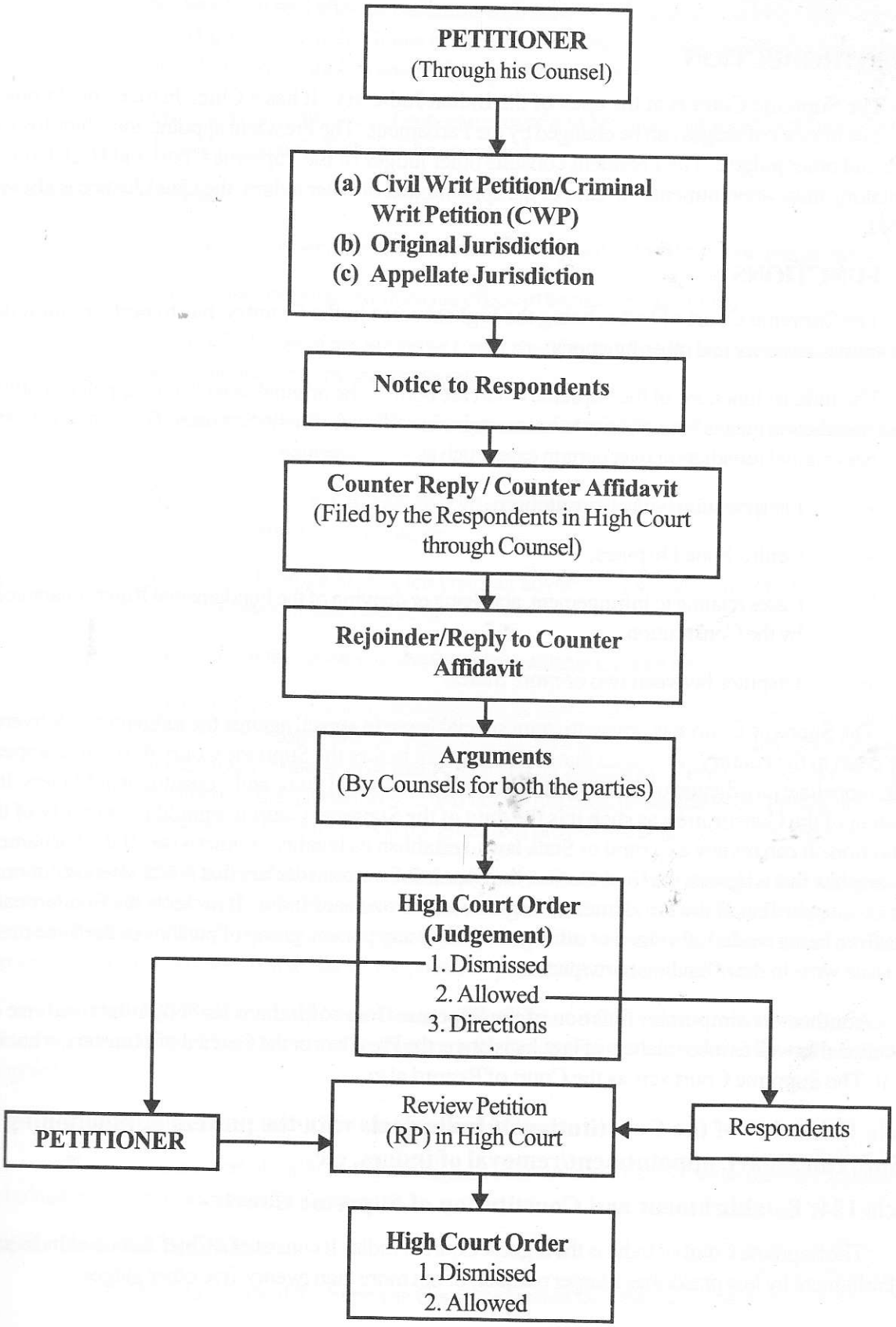
After filing the application in the High Court, the same is listed before the Hon'ble Judge for consideration. After considering the matter, the Hon'ble Judge may either issue notice to the respondents or dismiss the petition itself. If the notice is issued, then the respondents are required to be served by the

petitioner and the respondents are required to file their reply to the petition. The reply prepared is required to be vetted by the Law Ministry and then is handed over to the Counsel for Government for filing in the Court. Thereafter, the petitioner can file the rejoinder to the reply of the Govt. After completion of these formalities i.e. completion of pleadings, the matter is argued before the Hon'ble judge who after hearing the arguments on both the sides passes his order allowing the petition thereby granting the relief claimed by the petitioner with certain directions to the parties. If the matter is dismissed, the Govt. has nothing to do except to procure the certified copy of the order. If the petition is either allowed or directions are issued to the Govt. then the Govt. can either file a review application before the same bench or may file appeal against the order before the Higher court which may be the Division Bench of the High Court or may be Supreme Court, as the case may be.

2.4.5 Contempt jurisdiction

The High Court has powers to punish for the contempt of its orders under Article 215 of the Constitution of India read with Contempt of Court Act, 1971. The Contempt of Court Act, 1971 defines the Contempt of Court in Section 2(a) to mean Civil Contempt or Criminal Contempt. The Civil Contempt has been defined in Section 2(b) to mean willful disobedience to any judgement, decree, direction, order, writ or other processes of a court or willful breach of undertaking given to a Court. In case of Civil Contempt, the High Court has power to punish the contemner with simple imprisonment for a term which may extend to 6 months or with fine which may extend to Rs. 2000/- or with both. However, the contemner may be discharged or the punishment ordered may be remitted on apology being made to the satisfaction of the Court. The High Court has got powers to punish contemner for the contempt committed of the orders passed by the Subordinate Courts.

FLOW CHART OF A CASE FILED IN HIGH COURT



2.5 THE SUPREME COURT OF INDIA

2.5.1 INTRODUCTION

The Supreme Court is at the apex of the Indian Judiciary. It has a Chief Justice and 25 other judges. The number of judges can be changed by the Parliament. The President appoints the Chief Justice of India and other judges. The President consults other judges of the Supreme Court and High Courts while making these appointments. In case of the appointment of other judges, the Chief Justice is always consulted.

2.5.2 FUNCTIONS

The Supreme Court of India, being the highest court in the Country, has to perform judicial, administrative, advisory and other functions.

The Judicial functions of the Supreme Court are both of the original as well as of appellate nature. Original jurisdiction means the authority to hear certain cases directly for the first time. The Supreme Court of India has original jurisdiction over certain cases such as:-

- Interpretation of the Constitution,
- Centre-State Disputes,
- Cases relating to infringement, abridging or denying of the Fundamental Rights guaranteed by the Constitution,
- Disputes between two or more States.

The Supreme Court has power to grant special leave to appeal against the judgements delivered by any court in the country. The cases that can be brought before the Supreme Court, through an appeal, from the appellate jurisdiction of the court are Criminal Cases, Civil Suits, and Constitutional Matters. It is Custodian of the Constitution as such it is the duty of the Supreme Court to uphold the sanctity of the Constitution. It can review a Central or State law to establish its legality or otherwise. If the Parliament passes any law that is against the Constitution, the Supreme Court can declare that law as unconstitutional. It acts as the guardian of the Fundamental Rights of the citizens of India. It protects the Fundamental Rights from being eroded, abridged or infringed upon by any person, group of persons or the State itself. It can issue writs to the offending party/parties.

Another very important function of the Supreme Court of India is its obligation to advise on constitutional as well as other matters of law, legislature, the President or the Council of Ministers, whoever seeks it. The Supreme Court acts as the Court of Record also.

Article 124 to 147 of the Constitution of India deals with the powers & functioning of the Supreme Court, appointment/removal of judges, etc.

Article 124: Establishment and Constitution of Supreme Court: -

The Supreme Court of India is the highest Court in India. It consist of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than twenty-five other judges.

(2) Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years.

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted;

Provided further that-

(a) a judge may, by writing under his hand addressed to the President, resign his office;

(b) a judge may be removed from his office in the manner provided in clause (4)

[(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide]

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an advocate of a High court or of two or more such Courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist

(4) A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

Article 129.Court of Records: - All the decisions and decrees, issued by the Supreme Court itself, are duly printed and kept in record for future reference in the Court as well as for the use of lawyers in their pleadings. The Supreme Court also keeps important decisions by the High Courts of the land in record for future reference. It also has all the power to punish for contempt of itself.

Article 130. Seat of a Supreme Court: -The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

2.5.3 Powers and Functions of the Supreme Court

The Supreme Court of India, being the highest court in the Country, has to perform many judicial, administrative, advisory and other functions.

2.5.4 Judicial functions

The Judicial functions of the Supreme Court are both of the original as well as of appellate nature.

Article 131. Original jurisdiction of the Supreme Court: -Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute-

(a) between the government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more states, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends;

Article 132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases: -

An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under Art 134A that the case involves a substantial question of law as to the interpretation of this Constitution.

Article 133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.

An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India

(a) that the case involves a substantial question of law as to the interpretation of this Constitution.

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court

Article 136: Special Leave to appeal by the Supreme Court:

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgement, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

[Article 136 of the Constitution of India provides that the Supreme Court may, in its discretion, grant special leave to appeal from any judgement order without receiving certificate of the High Court.]

Article 136 confers a wide discretion on the Supreme Court to entertain an appeal in suitable cases not otherwise provided for by the Constitution. However this Article of the Constitution does not confer a right of appeal to any party but it confers a discretionary power on the Supreme Court to grant special leave to appeal from the order of any Court or Tribunal. The grounds on which the Supreme Court would normally interfere with decisions arrived at by Tribunals can be classified under the following categories, viz.,

(1) Where the Tribunal acts in excess of the jurisdiction conferred upon it under the statute or regulation creating it or where it ostensibly fails to exercise a patent jurisdiction;

(2) Where there is an apparent error on the face of the decision;

(3) Where awards are made in violation of principles of natural justice causing substantial and grave injustice to parties; and

(4) Where the Tribunal has erroneously applied well-accepted principles of jurisprudence.

Effect of dismissal of petition.

1. Mere dismissal of special leave petition does not amount to acceptance of correctness of the High Court decision sought to be appealed against (Rup Diamonds Vs UOI A. 1989 S.C. 674).

2. Dismissal of a special leave petition in limine does not preclude Supreme Court from considering the point in subsequent appeal; [Scientific Adviser Vs Daniel, (1990) Supp SCC 374].

3. When Supreme Court gives reasons while dismissing a special leave petition under Art. 136, the decision attracts Art. 141. But when no reason is given and the petition is summarily dismissed, the Court does not lay down any law.

Article 137. Review of judgments or orders by the Supreme Court:- Subject to the provisions of any law made by Parliament or any rules made under Article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

Article 138. Enlargement of the jurisdiction of the Supreme Court: -

1. The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

2. The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

Article 139. Conferment on the Supreme Court of powers to issue certain Writs: -

Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for any purposes other than those mentioned in clause (2) of Article 32.

Article 139A. Transfer of certain cases: -

1. Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or an application made by the Attorney-General of India or by a party to any such case that such questions are substantial

questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself;

Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.

2. The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.

Article 141. Law declared by Supreme Court to be binding on all courts: - The law declared by the Supreme Court shall be binding on all courts within the territory of India.

Supreme Court makes law by decisions

The Court under Article 141 of the Constitution is enjoined to declare law. The law declared by the Supreme Court is the law of the land [DTC Vs DTC Mazdoor, (1991) Supp.(1) SCC 600(Para 134) CB].

'Law declared': In case of conflict between decisions of the Supreme Court itself, it is the latest pronouncement, which will be binding upon the inferior Courts, unless the earlier was of a larger Bench. If the later decision is that of a larger Bench, the previous decision will be deemed to have been overruled and completely wiped out.

Article 143. Power of President to consult Supreme Court: - If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

Article 76. Attorney-General for India

1. The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney General for India.

2. It shall be the duty of the Attorney General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

3. In the performance of his duties the Attorney General shall have right of audience in all courts in the territory of India.

4. The Attorney General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

2.5.5 Procedure before Supreme Court

When a case is filed before the Supreme Court, the same is listed before the Hon'ble judges. The Hon'ble Judges may either issue notice or admit the case for consideration or reject the same. If either notice is issued or case is admitted for consideration, the respondents are required to be served by issuing a notice to them. Thereafter, the respondents can file the respective replies, within the time limit granted by the Supreme Court to which the petitioner can file its rejoinders. Thereafter, the matter is considered by the Hon'ble Supreme Court and the matter may either be dismissed or allowed or directions may be issued. It may be noted that against the orders passed by the Supreme Court, no appeal can be filed and the orders are binding on all the authorities within the territory of India and are to be followed and observed.

Like the High Courts, the Supreme Court also has the powers to punish a contemner for the contempt of its orders committed by that person.

CHAPTER - III

REMEDIES AVAILABLE UNDER THE CONSTITUTION

3.1 Introduction

The Constitution of India guarantees six Fundamental Rights to the citizens of the country. These rights are fundamental to the growth of individuals as balanced and responsible citizens. One of the six Fundamental Rights is "Right to Constitutional Remedies". This right empowers the citizens to go to a Court of Law in case of denial of any of the Fundamental Rights. The Courts of Law stand as a guard against violation of the Fundamental Rights by the Government. The Right to Constitutional Remedies empowers the aggrieved person to go to court and get justice against Government action. The procedure of asking the Court to preserve or safeguard the citizen's Fundamental Rights can be in various ways. The court can issue various kinds of writs. These writs are Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto. The Right to Constitutional Remedies has one important exception, which is when an emergency is declared; this right is suspended by the Central Government. After the emergency is revoked, this right again comes into force. A brief discussion of various writs, which can be issued by the Supreme Court and the High Courts, is given in the following pages.

3.2 Remedies available to Central Govt. Servants

The Government servants have the remedy of approaching the Central Administrative Tribunal in service matters, if their grievances are not resolved by their Department. The Government employees can also approach various Tribunals constituted under various Acts such as Human Rights Commission, National Commission for SC & ST, Chief Vigilance Commission, Disability Commission, etc. The Government employee should not directly approach the High Courts for his grievance related to service maters. In case of violation of any Fundamental Rights not covered under Service matters, the Government employees can approach the High Court or Supreme Court by way of writ petition or civil courts by way of civil suits.

3.3 Types of Writs

1. Habeas Corpus:

The writ of Habeas Corpus is a remedy available to a person who is confined without legal justification.

The word 'Habeas Corpus' literally means " to have a body". When a prima facie case for the issue of writ has been made then the Court issues a rule nisi upon the relevant authority to show cause why the writ should not be issued. This is in order to let the court know on what ground he has been confined and to set him free if there is no justification for his detention. This writ has to be obeyed by the detaining authority by production of the person before the court. Under Articles 32 and 226, any person can move for this writ to the Supreme Court and High Courts. The applicant may be a prisoner or any person on his behalf to safeguard his liberty for the issuance of the writ of Habeas Corpus. No man can be punished or deprived of his personal liberty except for violation of law and in the ordinary legal manner. An appeal to the Supreme Court of India may lie against an order granting or rejecting the application (Articles 132, 134 or 136). The disobedience to this writ is met with punishment for contempt of Court under the Contempt of Courts Act.

2. MANDAMUS :

The word 'Mandamus' literally means a command. The writ of mandamus is, thus, a command issued to direct any person, corporation, inferior court, or Government requiring them to do a particular thing therein specified which pertains to his or their office and is further, in the nature of a public duty.

This writ is issued when the inferior tribunal has declined to exercise jurisdiction while resort to certiorari and prohibition arises when the tribunal has wrongly exercised jurisdiction or exceeded its jurisdiction and are available only against judicial and quasi-judicial bodies. Mandamus can be issued against any public authority. The writ is used for securing judicial enforcement of public duties. It can be invoked against any public authority. In a fit case, Court can direct executives to carry out Directive Principles of the Constitution through this writ. The applicant must have a legal right to the performance of a legal duty by the person against whom the writ is prayed for. It is not issued if the authority has a discretion.

The Constitution of India under Articles 32 and 226 enables mandamus to be issued by all the High Courts and the Supreme Court to all authorities.

Mandamus does not lie against the President or the Governor of a State for the exercise of their duties and power (Article 361). It does not lie also against a private individual or body except where the state is in collusion with such private party in the matter of contravention of any provision of the Constitution of a statute. It is a discretionary remedy and High Court may refuse if alternative remedy exists except in case of infringement of Fundamental Rights.

3. PROHIBITION:

A writ of prohibition is issued by the Superior Court to an inferior Court preventing the latter from usurping jurisdiction which is not legally vested in it.

It compels courts to act within their jurisdiction when a tribunal acts without or in excess of jurisdiction, or in violation of rules or law, a writ of prohibition can be asked for. It is generally issued before the trial of the case.

Under the Constitution all writs can be issued by all High Courts throughout their respective territorial jurisdiction. While Mandamus commands activity, prohibition commands inactivity. It is available only against judicial or quasi-judicial authorities and is not available against a public officer who is not vested judicial functions. If abuse of power is apparent this writ may be a matter of right and not a matter of discretion. The Supreme Court can issue the writ only in case of fundamental right is affected by reason of the jurisdictional defect in the proceedings.

This writ is available during the pendency of the proceedings and before the order is made.

4. CERTIORARI:

It is available to any person whenever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially in excess of their legal authority.

The writ removes the proceedings from such body to the High Court and to quash a decision that goes beyond its jurisdiction. Under the Constitution of India, all High Courts can issue the writ of Certiorari throughout their territorial jurisdiction when the subordinate judicial authority acts (i) without or in excess of jurisdiction or in (ii) contravention of the rules of natural justice or (iii) commits an error apparent on the

face of the record. The jurisdiction of the Supreme Court to issue such writs arise under Article 32. Although the object of both the writs of prohibition and of certiorari is the same, the prohibition is available at an earlier stage whereas certiorari is available at a later stage but on similar grounds i.e. Certiorari is issued after authority has exercised its powers. Prohibition is issued during the pendency of the matter to prevent it from further proceeding. It means " by what warrant of authority."

5. QUO WARRANTO:

The writ of quo warranto enables enquiry into the legality of the claim that a person asserts to an office or franchise and to oust him from such position if he is an usurper. The holder of the office has to show to the court under what authority he holds office.

It is issued when:

(i) the office is of public and of a substantive nature;

(ii) created by statute or by the Constitution itself, and

(iii) the respondent must have asserted his claim to the office. It can issue even though he has not assumed the charge of the office.

The fundamental basis of the proceeding of Quo Warranto is that the public has an interest to see that a lawful claimant does not usurp a public office. It is a discretionary remedy which court may grant or refuse.

Where the applicant challenges the validity of an appointment to a public office, it is not maintainable whether or not any fundamental or other legal right of such person has been infringed. This writ intends to safeguard against the usurpation of public offices. Writ is maintainable even when the applicant is not personally aggrieved or interested in the matter.

CHAPTER - IV

MINISTRY OF LAW AND JUSTICE

Introduction

4.1 The Ministry of Law and Justice is the oldest limb of the Government of India dating back to 1833 when the Charter Act 1833 was enacted by the British Parliament. The said Act vested for the first time legislative power in a single authority, namely the Governor General in Council. By virtue of this authority and the authority vested under him under Section 22 of the Indian Councils Act 1861, the Governor General in Council enacted laws for the country from 1834 to 1920. After the commencement of the Government of India Act 1919, the legislative power was exercised by the Indian Legislature constituted there under. The Government of India Act 1919 was followed by the Government of India Act 1935. With the passing of the Indian Independence Act 1947 India became a Dominion and the Dominion Legislature made laws from 1947 to 1949 under the provisions of Section 100 of the Government of India Act 1935 as adapted by the India (Provisional Constitution) Order 1947. Under the Constitution of India, which came into force on the 26th January 1950, the legislative power is vested in Parliament.

Composition of Ministry

4.2 The Ministry of Law and Justice comprises of the Legislative Department and the Department of Legal Affairs. The Department of Legal Affairs is concerned with advising various Ministries of the Central Government while the Legislative Department is concerned with drafting of principal legislation for the Central Government.

Department of Legal Affairs

4.3 The Department of Legal Affairs renders advice to various Ministries of the Government of India on legal matters, carries out conveyancing work on their behalf, and attends to litigation work of the Central Government in Supreme Court, various High Courts and some of the subordinate courts. This Department is also concerned with entering into treaties and agreements with foreign Governments in matters of civil law, authorising officers of the Central Government to execute contracts and assurance of property on behalf of the President, and authorising officers to sign and verify plaints, written statements in suits by or against the Government. It is further concerned with the appointment of the Law Officers, namely, Attorney General, Solicitor General and Additional Solicitors General. This Department administers the Advocates Act, 1961, the Notaries Act, 1952 and the Legal Services Authorities Act, 1987. Department of Legal Affairs is also administratively in charge of Income Tax Appellate Tribunal (ITAT), Indian Legal Service and Law Commission of India.

4.4 This Department has a two tier organisational set-up, i.e. the Main Secretariat at New Delhi and Branch Secretariats at Bangalore, Kolkata, Chennai and Mumbai. The set-up at main Secretariat includes the Secretary, Additional Secretaries, Legal Adviser (Conveyancing), Joint Secretary & Legal Advisers and other Legal Advisers at various levels. The work relating to legal advice and conveyancing have been distributed amongst the Groups of officers. Each Group is normally headed by a Joint Secretary & Legal Adviser who is assisted by a number of Legal Advisers at different levels. Ministry of Law & Justice office Memorandum at 4/6/91 issued in this regard is at Annexure -I to this chapter.

4.5 The litigation work in Supreme Court on behalf of the Ministries of the Government of India and Union Territories is handled by the Central Agency Section headed by a Joint Secretary and Legal Adviser. The litigation work in Delhi High Court is processed by Litigation (High Court) Section.

This Department has a special Cell dealing with the implementation of the recommendations of Law Commission. This Cell also administers the Advocates Act.

Advice work

4.6 This Department promptly attends to advice matters received from various Ministries/Departments. If a case involves a very important or intricate question of law, opinion of one of the Law Officers is also taken in the matter.

Litigation work

4.7 For the purpose of conduct of Government litigation, this Department prepares panels of Advocates based on their experience. Advocates from these panels are engaged to represent the Government in the cases. In important matters before the Supreme Court and High Courts, one of the Law Officers is also engaged and made in charge of the particular case. For better conduct of litigation work, this Department has set up its Branch Secretariats at Bangalore, Kolkata, Chennai and Mumbai. Of late a special Cell has been created in this Department to monitor the performance of Government Lawyers. This Cell is headed by an Additional Secretary.

Conveyancing

4.8 Conveyancing is the law and practice of effecting property transactions and of contracts. Conveyancing is a system of documentation relating to transactions of properties movable or immovable as well as contracts. It can be described as an 'art of creating, transferring and extinguishing interests in properties'. It can also be described as a methodical system of drafting documents in accordance with the law relating to the transactions, which the document represents, or records. Every document relating to property or other commercial transactions has to be based on the law relating thereto, otherwise the document may prove to be illegal or ineffective and so also the transaction represented by it. That is where conveyancing comes and becomes a branch of legal system and practice. The advantage of conveyancing is that if documentation is made systematically and meticulously it would put every transaction embodied in it in its proper perspective. It would save lot of disputes between the parties and their successors and consequently it would save a lot of litigation.

Legal aid

4.9 Providing legal aid to the poor and the weaker sections of the society is one of the Directive Principles of State Policy. The Legal Services Authorities Act, 1987 provides for Constitution of Legal Services Authorities. These bodies have the responsibilities of providing free and competent legal services to the weaker sections of the society and to organise Lok Adalats. This Act has put Lok Adalats on a statutory footing. All the provisions of the Act have been extended to all the States and Union Territories. The Legal Aid Programme is monitored by the National Legal Services Authority (NALSA) which is headed by the Chief Justice of India.

Legal Profession

4.10 The Advocates Act, 1961 has consolidated the law relating to legal practitioners. It also provides for constitution of State Bar Councils and the Bar Council of India. State Bar Councils mainly admit persons as advocates on their rolls and deal with cases of misconduct against advocates. The Bar Council of India lays down the standard of professional conduct and etiquette for advocates. The Bar Council of India also recognises the law degrees of various Universities. For this purpose, it conducts visits and inspections of those Universities.

4.11 Responsibility of Central Government Counsel (CGSC)

1. The Counsel shall appear in Courts for which he has been empanelled by the Ministry of Law & Justice, Department of Legal Affairs, New Delhi.

2. If so required, the CGSC will appear in the District and Subordinate Courts, Tribunals, Commissions of Inquiry before the Arbitrators/Umpires etc. at the Headquarters. He may also be required to appear in courts, Tribunals, Commission of Inquiry before the Arbitrators/Umpires outside the Headquarters.

3. When any case attended to by him is decided against the Government of India and/or its Officer he will give his opinion regarding the advisability of filing an appeal from such a decision.

4. He will render all assistance to the Law Officers, Advocate General of the State Government, Special or Senior Counsel, if required to do so, who may be engaged in a particular case before the High Court, Tribunals, Commissions of Inquiry, before the Arbitrators/Umpires etc.

5. He will keep the Department concerned informed of the important developments in the case from time to time, particularly with regard to drafting, filing of papers, dates of hearing of the case, supplying copies of judgments etc.

6. He will perform such other duties of a legal nature, which may be assigned to him by the Department of Legal Affairs, Ministry of Law, Justice & Co. Affairs, from time to time.

Neglect of duty by CGSC

4.12 When the CGSC is not performing his duties sincerely and to the satisfaction of the Department i.e. the respondents, then the department can bring the matter to the notice of the Ministry of Law & Justice. The matter can also be reported to the Bar Council of the concerned States for action against the advocate.

Notaries

4.13 The profession of notaries is regulated by the Notaries Act, 1952. The Act provides for appointment of notaries by the Central Government and the State Governments, their functions, removal, reciprocal arrangement for recognition of notarial acts done by foreign notaries, etc. This Act prohibits a person from practicing as a notary without obtaining a certificate of practice either from the Central Government or the State Governments. The Notaries Act has been amended in December 1999. By the said amendment, the definition of the term 'legal practitioner' has been modified to bring it in line with the Advocates Act,

1961. The amendment also makes it clear that a person shall not have the right to practice as a notary unless approved by the Central Government. The validity period of the certificate of notary has been enhanced to five years from the previous three years period. It has also been provided that a notary can act as a commissioner to record evidences, arbitrator, mediator or conciliator. Conviction for an offence involving moral turpitude and failure to get the certificate renewed have been incorporated as additional grounds for removal of the name of the notary from the register of notaries. The quantum of punishment for falsely representing as a notary or unauthorisedly doing any notorial act has been enhanced from three months to one year.

4.14 The Government of India is empowered to appoint Notaries for the whole or any part of India whereas a State Government is empowered to appoint Notaries for the whole or any part of that State. The procedure of appointment of a Notary involves a number of statutory steps. The Notaries Rules, 1956 have been amended to prescribe a revised memorial which is the basic document for processing of the applications. The revised memorial contains a column indicating whether the applicant belongs to SC/ ST/OBC/General. The Notaries Rules have also been amended to relax the eligibility criteria in respect of persons belonging to Scheduled Castes / Scheduled Tribes / Other Backward Classes.

Arbitration work

4.15 This Department also handles arbitration matters concerning various Departments/Ministries. Officers in DGS&D and CPWD are also posted by Deptt of legal Affairs, who act as Arbitrators in disputes with suppliers/contractors. An officer in the rank of Joint Secretary & Legal Adviser is posted in Permanent Machinery of Arbitration in Department of Public Enterprises. Besides, Law Secretary nominates Arbitrators in disputes where the Arbitration Clause provides for the same.

Engagement of counsel and payment of fees

4.16 Various orders issued by Ministry of Law and Justice is regard to engagement of counsel and payment of fees are reproduced as Annexure II to VIII of this chapter.

Annexure I

Government of India
Ministry of Law & Justice

Department of Legal Affairs (Judicial Section), New Delhi

OM No F.36 (2) /90- Judl Dated 4/6/91

OFFICE MEMORANDUM

Subject: Supervision of Central Government Litigation work at different High Courts

With a view to exercise better supervision over the Central Government Litigation work in various High Courts and their Benches and in Subordinate Courts, it has been decided that the Central Government Litigation work in the following High Courts and their Benches and in the Subordinate Courts may be placed in the charge of the officers as indicated below: -

(a)	Mumbai High Court, Mumbai and at Nagpur, Aurangabad & Goa Gujarat High Court at Ahmedabad Madhya Pradesh High Court at Jabalpur, Gwalior & Indore Rajasthan High Court, Jodhpur and at Jaipur All Subordinate Courts in the states of Maharashtra, Gujarat, Rajasthan, Madhya Pradesh, Goa and Daman Diu.	Joint Secretary and Legal Adviser, Branch Secretariat, Bombay, Min of Law and Justice, Deptt. Of legal Affairs, Aayakar Bhavan Annexe, New Marine lines, Mumbai-400020
(b)	Guwahati High Court Patna High Court, Patna and Ranchi Orissa High Court at Cuttack Sikkim High Court Kolkata High Court All subordinate Courts in West Bengal, Bihar, Assam,	Joint Secretary and Legal Adviser, Branch Secretariat, Kolkata, Min of Law and Justice, Deptt. Of legal Affairs, 4 K S Roy Road, Kolkata-700001

	Meghalaya, Arunachal Pradesh, Manipur, Tripura, Orissa	
(c)	Allahabad High Court, Allahabad and at Lucknow Punjab High Court, Chandigarh Jammu & Kashmir High Court, Srinagar at Jammu Himachal Pradesh High Court, Shimla Delhi High Court All subordinate Courts in the States of Delhi, Uttar Pradesh, Punjab, Haryana, Himachal Pradesh, Jammu & Kashmir	Additional Secretary/Additional Legal Adviser, In-charge of Judicial Section, Deptt of Legal Affairs, Main Secretariat, Shastri Bhavan, New Delhi-1
(d)	High Court of Kerala High Court of Tamilnadu All subordinate Courts in the States of Kerala, Tamil Naidu, Pondicherry.	Additional Legal Adviser, In-charge, Branch Secretariat, Min of Law and Justice, Deptt. Of legal Affairs, 623 Mount Road, Anna, Salai, Chennai-600006
(e)	High Court of Andhra Pradesh at Hyderabad Karnataka High Court, Bangalore All subordinate Courts in the States of Andhra Pradesh and Karnataka.	Additional Legal Adviser, In-charge, Branch Secretariat, Min of Law and Justice, Deptt. Of legal Affairs, 240, 4th Main Road, Sadashiv Nagar, Bangalore-560080

2. Officers put in charge to supervise the Central Government Litigation work are required to acquaint themselves with the conduct of the Central Government Litigation work in the High Courts for settling the fee bills of the counsel and dealing with the day to day problems relating to payment of fee on the basis of revised terms and conditions issued by the Main Secretariat from time to time and also vetting of the RA / WS and pleadings and other legal work. They will assess the performance of the Central Govt. Standing Counsel and acquaint themselves with the Advocates who may prove useful in the matter of appointment as Standing Counsel/Senior Counsel if need be. They may also meet the Chief Justice / Judges of the various High Courts, Administrative Judge and Registrar with a view to understand the difficulties of the Courts, Procedures and solve the problems of the Standing Counsel, if any. The reports of the supervision work should be sent to the Main Secretariat with the least possible delay after the supervision is carried out.

3. All the Ministries/Deptt. are requested to refer to their problems regarding engagement of Standing Counsel, payment of fee or any other problem relating to terms and conditions applicable to Govt. Counsel appointed for that Court and materials for vetting etc., directly to the officer of the Branch Secretariat who are made incharge as per this Office Memorandum for the purpose of smooth functioning of litigation work.

4. This is in suppression of this Department's OM No.36 (2)/74-J dt.18.2.74 on the subject.

Sd/-
(Mrs. R Lakshmanan)
Addl. Secretary to the Government of India

Annexure II

No.F.24 (2)/99-Judl.

Government of India, Ministry of Law, Justice & Company Affairs

Department of Legal Affairs Judicial Section

New Delhi, the 24th September 1999

OFFICE MEMORANDUM

Subject: Revision of fee payable to Senior Counsel /Central Government Standing Counsel and Central Government Pleaders in the Delhi High Court w.e.f. 1st October 1999

Enclosed herewith please find a copy of the Revised Schemes containing terms and conditions for the engagement of (i) Senior Counsel and (ii) Central Government Standing Counsel and Central Government Pleaders in respect of civil litigation and such criminal cases as may be entrusted to them in **Delhi High Court** effective from 1st October 1999.

2. For the guidance of various Ministries/Departments, the following clarifications are given for settling the fee bills, TA/DA etc., payable to them for their engagement in the Delhi High Court, in courts other than the High Court, Commission of Inquiry, Tribunals etc: -

(a) The Counsel will be engaged only in accordance with the revised terms and conditions applicable to them w.e.f.1.10.1999 and no case for payment of fee at the higher rates than the rates prescribed in the Revised Scheme will be entertained by this Department.

(b) In respect of the cases listed for hearing in the Delhi High Court, Commission of Inquiry, Tribunals, other courts etc. located in Delhi the Counsel will be engaged by the Officer Incharge Litigation (HC) Section or any other authorised officer of the Litigation (HC) Section of the Department at Delhi High Court depending on importance of the case, legal issues and financial stakes involved. However, in respect of their engagement in Courts, Commission of Inquiry, Tribunals, etc., outside Delhi/New Delhi, prior approval of the Department of Legal Affairs, Ministry of Law, Justice & Co. Affairs, New Delhi will be required.

(c) As in the past, Ministry of Law, Justice & Co. Affairs, Department of Legal Affairs, will only be making the payment of monthly retainer to the CGSC and installation and annual rental charges of telephones provided to them.

(d) For appearance in the Delhi High Court, in connection with the fee payable to them is to be paid by the Department of Legal Affairs, Ministry of Law, Justice & Co. Affairs, Litigation (HC) Section, Delhi High Court, New Delhi. The fee bills are to be processed by the Litigation (HC) Section and the payment is to be made directly by it to the Counsel concerned. Other miscellaneous and out of pocket expenses will be borne by the Ministry/ Department on whose behalf the Counsel conducts the case in the concerned court. Such expenses will be paid in advance to the Litigation (HC) Section in accordance with the

instructions issued by the Litigation (HC) Section. However, the expenditure relating to TA/DA payable to the Counsel for their appearance in courts, Tribunals, Commission of Inquiry outside Delhi/New Delhi and in foreign countries, is to be borne by the Ministry/ Department on whose request the counsel is engaged to conduct the case.

(e) The Counsel will be paid fee at the old rates in respect of their appearance in the High Court etc. and other work done by them prior to 1.10.1999, and at the revised rates in respect of the work done by them on / after 1st October, 1999. However, in cases where the Standing Counsel/Central Government Pleader has put in some appearance before 1.10.99 and some on/after 1.10.1999, the Counsel will be paid fee in respect of appearance at the revised rates for the entire case. The fee in respect of drafting work etc. will be paid in accordance with the rates, which were applicable to him at the time he completed the drafting work etc.

(f) The present procedure, which may be amended from time to time, regarding the 'high fee' cases or engagement of Special Panel Counsel will continue to be followed.

(g) The Schemes contained in this OM will also apply to counsel of CAT, Delhi. However, the fee payable to them will be borne by the Ministries/Departments themselves.

3. All the Ministries/Departments which propose to engage the Counsel to appear in the Delhi High Court are requested to contact the officer incharge of Litigation (HC) Section of this Department located in Delhi High court Annexe Building, New Delhi. However, for the engagement of the counsel outside Delhi/New Delhi (including other courts located in Delhi) they may obtain the approval of the Department of Legal Affairs, Ministry of Law, Justice & Co. Affairs, New Delhi after settling the terms and conditions of their engagement. They are further requested to make arrangements for their travel in consultation with the counsel concerned. The Departments are also requested to ensure that the bills in this respect are made in their names and settled by them directly so that the necessity of reimbursement of expenses incurred by the Counsel later is minimized and they are not put to inconvenience.

4. All the Ministries/Departments are further requested to ensure that the bills in respect of other expenditure if incurred by the Counsel in connection with TA/DA etc. for their appearance in various High courts etc. outside Delhi/New Delhi, are sanctioned and money paid to them immediately and in any case not later than a month from the date of receipt of the bills.

5. If any difference or doubt arises in respect of fee or other bills claimed by the counsel, the matter may be referred to the Law Secretary whose decision shall be final.

Sd-
(Krishna Kumar)
Joint Secretary & Legal Adviser to the
Govt. of India

CGSC/Central Government
Pleaders, Delhi High Court

No. F24(2) 99-Judl.

Government of India
Ministry of Law, Justice & Company Affairs
Department of Legal Affairs
Judicial Section

Subject:- Revised Scheme containing terms and conditions for the engagement of Central Government Standing Counsel and Central Government Pleaders on behalf of the Government of India in respect of Civil Litigation and such criminal cases as may be entrusted to them in Delhi High Court effective from 1st October, 1999

I Scope of the Scheme

The scheme will be operative in respect of all the civil litigation cases and such criminal cases on behalf of the Government of India (except the Railways and Income-tax Departments) as may be entrusted to the Counsel in Delhi High Court. However, the Counsel will not put in their appearance as a matter of course, in cases relating to Central Sales Tax unless they have been specifically, instructed otherwise, in regard to any particular case.

2. **Incharge of Litigation cases**: The Officer In-charge of the Litigation (HC) Section, Department of Legal Affairs, New Delhi, will be incharge of the entire litigation work on behalf of the Government of India before the Delhi High Court, except such of the work for which separate arrangements have been made viz. in respect of Railways and Income-tax departments.

3. **Allocation of cases to the Counsel**: Allocation of cases to the Counsel will be made by the Officer Incharge of the Litigation (HC) Section, Department of Legal Affairs, New Delhi or any other officer authorised by him.

II Definitions

For the purpose of this Scheme, the expressions:

(a) 'Counsel' will mean and include the Central Government Standing Counsel and Central Government Pleader.

(b) 'Government of India' means and includes the Government of India and Government of a Union Territory also; and

(c) 'Law Officer' means and includes the Attorney General for India, the Solicitor General of India and Additional Solicitors General of India.

III Standing Counsel and Panel of Central Government

Central Government Standing Counsel and a Panel of Central Government Pleaders:-

There will be six Central Government Standing Counsels and a panel of counsels consisting of Central Government Pleaders to conduct the litigation cases on behalf of the Government of India before the Delhi High court. The strength of the counsels engaged/empanelled may be determined by the Government of India.

IV Term of engagement

1. **Initial/further engagement**: The term of engagement of the counsel would be for a period of three years or until further orders whichever is earlier. The term may be extended for a further period not exceeding three years, at the discretion of the Government of India.

2. **Termination of Engagement**: The engagement of the counsel would be terminable at any time without assigning any reason.

V Headquarters of the Counsel

Headquarters at the place of the usual sitting of High Court or its Bench: The Counsel will locate his Headquarters during the period of his engagement as such at the place of the usual sitting of the High Court concerned or its Bench as the case may be.

VI Duties

The Counsel shall:

(i) appear in Delhi High Court in the cases marked to him by the Officer Incharge of the Litigation (HC) Section, Department of Legal Affairs, New Delhi.

(ii) If so required, appear in the District and Subordinate Courts, Tribunals, Commissions of Inquiry before the Arbitrators/Umpires etc. at the Headquarters. He may also be required to appear in courts, Tribunals, Commission of Inquiry before the Arbitrators/Umpires outside the Headquarters.

(iii) When any case attended to by him is decided against the Government of India and/or its Officer give his opinion regarding the advisability of filing an appeal from such a decision.

(iv) Render all assistance to the Law Officers, Advocate General of the State Government, Special or Senior Counsel, if required to do so, who may be engaged in a particular case before the High Court, Tribunals, Commissions of Inquiry, before the Arbitrators/Umpires etc.

(v) Keep the Department concerned informed of the important developments in the case from time to time, particularly with regard to drafting, filing of papers, dates of hearing of the case, supplying copies of judgments etc.

(vi) Furnish to the Litigation (HC) Section and the Department of Legal Affairs periodical statements and reports/returns which may be called for from time to time;

(vii) Render detailed account of the advance in the form of out of pocket expenses to officer Incharge of Litigation (HC) Section; and

(viii) Perform such other duties of a legal nature, which may be assigned to him by the Department of Legal Affairs, Ministry of Law, Justice & Co. Affairs, from time to time.

VII Retainer and other perquisites;

Retainer payable to Central Government Standing Counsel:

The Central Government Standing Counsel will be paid a monthly retainer of Rs. 3000/- (Rupees Three thousand only), which will include charges for staff, office rent, postage and all other establishment charges. The Central Government Pleaders will not be entitled to any retainer and other perquisites mentioned herein.

2. The Retainer will be paid by the Ministry of Law, Justice & Co. Affairs, Department of Legal Affairs, New Delhi.

3. **Perquisites:** The Central Government Standing Counsel will be allowed the facilities of telephone and furniture in the office allotted for the use of the Central Government Standing Counsel in Delhi High court premises for conducting the cases on behalf of the Government of India. However, such a facility will be available to him subject to the availability of the premises and the requirement of the Department of Legal Affairs.

VIII Fee payable to the Counsel

The fee payable to the Counsel in Delhi High Court would be as follows: -	
(i) Civil or Criminal Writ Petitions under Articles 226 and 227 of the Constitution, orders made in such petitions including appearance on admission stage or in civil miscellaneous petitions. If in a case hearing on a Writ Petition goes on for more than 3 days, an additional fee of Rs.450/- per day (not exceeding three in number) may be paid by way of refresher fee.	Rs.2250/- per case
(ii) Petition under Articles 132 or 133 of the Constitution in Civil or Criminal cases.	Rs.900/- per case per day subject to a maximum of Rs.1800/- for the case.
(iii) Original suits, civil appeals not otherwise specifically provided under these terms (including drafting of pleadings): (a) Value up to Rs.5000/- (b) Thereafter Value up to Rs.20,000 (c) Thereafter Value up to Rs.50, 000 (d) Thereafter Value over Rs.50,000 The Ad Valorem fee shall be subject to a maximum of Rs.13,500/-	Ad Valorem fee shall be paid on the following scales: 7½% 3% 1½% ¾%

(iv) Appeals from decrees from suits and proceedings including Second Appeals, except L.P.A. from petition under Articles 226 & 227 as mentioned in item (i) above and appeals from declaratory decrees or such decrees in either there is no valuation or valuation is notional or which are mainly on question of law and such appeals which have been specifically or separately provided herein	For each case same fee as in item (iii) above or fee fixed by the Court, whichever is higher
(v) Civil or Criminal Revision Petitions	Rs.1050/- per case
(vi) Civil Miscellaneous applications or petitions under the Indian Succession Act, Contempt of Court proceedings and other proceedings of an original nature not specifically provided otherwise.	Rs.750/- per case
(vii) References to the High Court under Sales Tax Act and Banking Company Petitions.	Rs.1050/- per case or the amount fixed by the High Court whichever is higher.
(viii) Company Petitions	To be regulated by the rule contained in Appendix III of the Company (Court) Rules, 1959.
(ix) All cases of the nature where no substantial legal work is involved and no substantial legal work is actually done till the disposal of the case and miscellaneous petitions or work not otherwise provided for like Forma Pauperis, Transfer Petitions, Settlement of list of Supreme Court case, execution proceedings.	Rs.300/- per petition.
(x) (a) <u>Cases under Arbitration Act</u>	In cases under Section 34 of The Arbitration and Conciliation Act, 1996 registered as Suits, the fee payable per case shall be 1/4th of the fee according to the scale mentioned in VIII (iii) if the case is uncontested subject to a minimum of Rs. 1050/- and a maximum of Rs. 3000/-

	(b) Where the case is contested, the fee payable shall be half of the ad-valorem according to the scale mentioned in item (iii) above.	
	(c) In cases other than Section 34	Rs.1200/- per case
	(d) In cases where no legal work is involved and the case is disposed of on oral submission conceding the case of other party. Decision of the Officer Incharge of the litigation (HC) Section as to the admissibility and quantum of fee payable in this behalf shall be final	The minimum fee shall be Rs.450/- and the maximum shall be Rs.1350/-
(xi)	(a) Appeals against awards given under the statutes relating to the acquisition or requisition of landed property and appeals in Arbitration cases	Fee shall be calculated on half ad-valorem basis according to the scale mentioned in item (iii), subject to a maximum of Rs.1350/-
	(b) Appeals from declaratory decrees or such decree in which either there is no valuation or valuation is notional which are mainly on question of law	- do -
(xii)	Written opinion other than referred to in VI (iii)	Rs.450/-
(xiii)	For drafting pleadings, written statements in suits and counter affidavits/returns/answers to the written petitions, grounds of appeal and applications for leave to appeal to the Supreme Court except in cases where fee on ad-valorem basis has been prescribed	Rs.750/- per pleadings

(Explanation: If substantially identical affidavits/written statement of ground of appeal applications are drafted in connected cases, only one drafting fee will be payable to the main case and no separate drafting fee will be payable in connected cases).

When the Counsel does not argue the case himself but only assists the Law Officers, Advocate General of the State Government or other Special/Senior Counsel, he will be entitled to the same fee as are payable to him deeming that he has appeared and argued the case himself.

3. Fees for appearance in the case in Subordinate Court at the Headquarters will be paid Rs.750/- for the first day and Rs.450/- for each subsequent day.

IX Out of Headquarters

When the Counsel is required to go out of headquarters in connection with Central Government litigation e.g. for conference with a Senior Counsel, appearance in a court outside the headquarters he will be entitled to a daily fee of Rs.1800/- per day for the days of his absence from the headquarters including the days of departure from, intervening holidays and arrival back at the headquarters, but no fee will be paid for the day of departure if he leaves the headquarters after court hours and for the day of arrival if he arrives at the headquarters before the court hours.

2. **Travel/Hotel expenses**: In addition to the daily fee, the Counsel will also be entitled to travel expenses for travel in air (economy class) or first class by train, road mileage for the journey from his headquarters to the airport/railway station and vice-versa and from the airport/railway station to the place of his stay out of headquarters and vice-versa at the rates admissible to Grade I/Class I Officers of the Central Govt. He will also be paid a lump sum amount of Rs.300/- as conveyance charges for performing local journey while outside the headquarters. He will also be entitled to reasonable actual expenses for stay in hotel, subject to a maximum of Rs.600/- per day.

X Clerkage

In addition to fees mentioned above, the Counsel will be entitled to 10% of fees subject to a maximum of Rs.1800/- in a case or batch of cases by way of clerkage.

XI Out of Pocket Expenses

The amount required for court fees at the time of filing a case and other miscellaneous expenses should be obtained by the counsel in advance from the Litigation (HC) Section of the Department of Legal Affairs. An account of the expenses incurred should be rendered to that section while presenting the final fee bill.

XII Right to Private Practice and Restriction

A Counsel will have the right to private practice, which should not, however, interfere with the efficient discharge of his duties as a counsel for the Govt. of India.

2. A Counsel shall not advise any party in or accept any case against the Government of India in which he has appeared or is likely to be called upon to appear for or advise or which is likely to effect or lead to litigation against the Government of India.

3. It the Counsel happens to be a partner of a firm of lawyers or Solicitors it will be incumbent on the firm not to take up any case against the Government of India or the Public Sector Undertaking in Delhi High court or any case arising in other Courts out of those cases e.g. appeals and revisions in the High Court or the Supreme Court.

XIII General

The various terms used in this Scheme will have the following meaning: -

(a) Effective Hearing

A hearing in which either one or both of the parties involved in a case are heard by the court. If the

case is mentioned and adjourned or only directions are given or only judgement is delivered by the Court, it would not constitute an effective hearing but will be termed as non-effective hearing.

(b) Uncontested Cases

All the suits and appeals are deemed to be 'uncontested', if these are withdrawn by the plaintiff/ appellant or are dismissed in limine or are otherwise decided by the Court ex-parte before the final hearing. No writ petition/revision/revision petition/second appeal (including any interlocutory application connected therewith) will be considered as 'uncontested' if it is decided by the Court on preliminary legal objections or is withdrawn by the petitioner/appellant at or during any stage of the final hearing in the presence of the Government or is withdrawn by the Government at the time of its admission.

(c) Substantial Work

When the case has been admitted by the Court after hearing on preliminary objection or filing of the affidavits/counter-affidavits etc. by the Counsel, 'substantial' work will be deemed to have been done.

(d) Identical Cases

Two or more cases in which substantially identical questions of law or facts are involved etc. and where the main difference is in the names, addresses of parties concerned, amount of money involved etc. where common or identical judgments are delivered irrespective of the fact whether all the cases are heard together or not.

2. In all cases, effective appearance is necessary for the counsel to claim fee.

3. No fee will be payable in cases where no legal work is required to be done e.g. cases in which the interests of the Government of India are to be watched pending instructions; cases regarding transmission of record to the Supreme Court, inspection of the court record for ascertaining the position of the case or either information needed.

4. No fee will be admissible for preparation but the Government may consider payment of a separate fee for preparation in special cases involving arduous work.

5. If the Counsel appears at the instance of the Union of India for parties other than the Union of India whose case is not inconsistent with that of the Union of India, he will be entitled to only one set of fee.

6. Appeals, revision or petitions arising from one common judgement or order will be together considered as one case, if they are heard together.

7 When cases argued before a single judge are referred to a Division Bench or to a Full Bench separate fee at the prescribed rates will be paid for appearance before each Bench.

8. In 'uncontested cases' the fee shall be one-third of the fees otherwise payable but if such a case is later on restored and decided in contest, the remaining two-thirds of the fee will be payable. A case shall be regarded as contested when a decision is given after hearing arguments on both sides.

9. No fee will be payable to the Counsel if an advance notice about the adjournment has been issued or the adjournment of the case has been made at his request due to reasons personal to him.

10. Where two or more cases (but nor more than 10 cases) involving substantially identical question of

law or facts, any one of such cases will be treated as a main case and the others as connected cases and the fee in such cases will be regulated as under irrespective of the fact whether all the cases are heard together or not.

(a) When the Counsel files separate and materially different affidavits, applications or grounds of appeal etc. in more than one case but the argument is heard in the main case and the other cases are decided accordingly, the Counsel shall be paid the full fee in the main case and Rs.150/- in each case of the connected cases.

(b) When the main case has been contested as in (a) above, but in the connected cases either affidavit or grounds of an appeal or petition similar to the one in the main case or nothing at all has been drafted by the Counsel he shall be paid the full fee in the main case and Rs.75/- only in each of the connected cases.

(c) When substantially different affidavits are drafted in each connected cases but all the cases are disposed of without contest, the Counsel shall got 1/3rd fees in the main case and Rs.150/- in each of the connected cases.

(d) When the counsel has drafted the affidavit, petition or grounds of appeal in the main case and has not drafted them in the connected cases or the drafts in the connected cases are substantially similar to the one in the main case and the cases are disposed of without contest, the Counsel shall get 1/3rd fee in the main case and Rs.75/- in each of the connected cases.

11. The fee to the Counsel will be paid by the Department of Legal Affairs, Ministry of Law, Justice & Co. Affairs, on presentation of a stamped receipt and on submission of a copy of the document drafted, it is a drafting fee, and submission of minutes or gist of proceedings, or a copy of order/judgment where it is necessary in case the claim is for appearance fee. The Counsel shall submit his fee bills within three months from the date on which the fee has accrued.

12. The fee will be payable in two stages, firstly, 1/3rd fee after substantial action has been taken i.e. first stage and secondly the remaining 2/3rd fee after the case has been decided i.e. second stage.

Provided, however, where during the pendency of a proceeding a Counsel is charged for some reason or the other, a fee commensurate to the work done by the outgoing Counsel, not exceeding 1/3rd of the total fee admissible for the case, may be paid. In such an event the balance of fee payable in the case will be paid to new Counsel after completion of the case. As regards, admissibility and quantum of fee in such cases, the decision of the Officer-in-charge of the Litigation (HC) Section of the Department of Legal Affairs shall be final.

13. In the event of any doubt or difference regarding the fees, the fees determined by the Secretary, Department of Legal Affairs, Ministry of Law, Justice & Co. Affairs shall be final and binding. He may by an order in writing, relax any of the provisions contained in the Scheme.

Sd-
(Krishna Kumar)
Jt. Secretary & Legal Advisor to the Government of India
No.F.24 (2)/99-Judl

SENIOR COUNSEL
DELHI HIGH COURT.

No. F. 24 (2)/99 - Judl
Ministry of Law, Justice & Company Affairs
Department of Legal Affairs
Judicial Section

***

Subject:- Revised Scheme containing terms and conditions for the engagement of Senior Counsel in respect of Civil Litigation cases and Criminal cases as may be entrusted to them in the Delhi High Court w.e.f 1st October, 1999.

***

I Scope of the Scheme

The Scheme will be operative in respect of all the civil litigation cases and such criminal Cases on behalf of the Government of India as may be entrusted to the Counsel in Delhi High Court.

In charge of Litigation Cases: The Officer Incharge of Litigation (HC) Section, Department of Legal Affairs, New Delhi, will be incharge of the entire litigation work on behalf of the Government of India before the Delhi High Court, except such of the work for which separate arrangements have been made.

Allocation of the cases to the counsel: Allocation of cases to the Counsel will be made by the Officer Incharge of the Litigation (HC) Section of the Department of Legal Affairs, New Delhi, or any other officer authorised by him.

II Definitions

For the purpose of this Scheme, the expressions: -

(a) 'Counsel' will mean and include the Senior Counsel;

(b) 'Government of India' means and includes the Government of India and also the Government of a Union Territory;

(c) 'Law Officer' means and includes the Attorney General for India, the Solicitor General of India and Additional Solicitors General of India.

III. Panel of Counsel

Panel of Senior Counsel: There will be a panel consisting of Senior Counsel to conduct the litigation cases on behalf of the Government of India before the Delhi High Courts, New Delhi. The strength of the counsel empanelled may be determined by the Govt. of India from time to time.

IV Term of engagement/empanelment

Initial engagement/empanelment: The engagement/empanelment of the Counsel would be for a

VIII Fee payable to the Counsel

The fees payable to the Counsel in Delhi High Courts would be as follows: -

(i)	Suits, writ petitions and appeals, including oral applications for leave to appeal to Supreme Court in Writ Petitions	Rs.3000/- per case per day of effective hearing. In case of non-effective hearing Rs.500/- per day subject to a maximum of five hearings.
(ii)	Applications for leave to appeal to the Supreme Court other than in Writ Petitions	Rs.1100/- per case
(iii)	Settling pleadings	Rs.900/- per case
(iv)	Miscellaneous Applications	Rs.900/- per case
(v)	Conference	Rs.300/- per conference. Subject to: a) For settling pleading- One conference b) In respect of hearing of Writ matters, Suits, Appeals and Supreme Court Leave Applications etc. -Three conferences (maximum)

IX. Out of Headquarters

If the counsel is required to go out of headquarters in connection with Central Government litigation e.g. for conference with Law Officer, Advocate General of the State Government or with a Special Counsel, appearance in a court outside the headquarters, he will be entitled to a daily fee to be decided by the Department of Legal Affairs on the basis of per day of appearance for the days of his absence from the headquarters including the days of departure from headquarters, intervening holidays and arrival back at the headquarters, but no fee will be paid for the day of departure if he leaves the headquarters after court hours or for the day of arrival if he arrives at the headquarters before the court hours.

2. Travel/hotel expenses: In addition to the daily fee, the counsel will also be entitled to travel expenses for travel by air (economy class) or first class by train, road mileage for the journey from his headquarters to the airport/railway station and vice-versa and from the airport/railway station to the place of his stay out of headquarter and vice-versa at the rates admissible to Grade I/Class I officers of the Central Government. He will also be paid a lump sum amount of Rs.300/- as conveyance charges for performing local journeys while outside the headquarters. He will also be entitled to reasonable actual expenses for stay in hotel, subject to a maximum of Rs.600/- per day.

X Clerkage

The counsel will not be entitled to the payment of clerkage on the fee payable to him.

XI Out of pocket expenses

The amount required for court fees at the time of filing a case and other miscellaneous expenses should be obtained by the court in advance from the Litigation (HC) Section. An account of the expenses incurred should be rendered to the Litigation (HC) Section while presenting the final fee bill.

XII Right to private practice and restrictions

A Counsel will have the right to private practice that should not, however, interfere with the efficient discharge of his duties as a counsel for the Government of India.

A Counsel shall not advise any party in or accept any case against the Government of India in which he has appeared or likely to be called upon to appear for or advise or which is likely to affect or lead to litigation against the Government of India.

If the counsel happens to be a partner of firm of lawyers or solicitors it will be incumbent on the firm not to take any case against Govt. of India or Public Sector Undertaking in Delhi High Court or any case arising in other courts out of these cases, e.g. appeals and revisions in the High Court or the Supreme Court.

XIII General

The various terms used in the Scheme will have the following meaning: -

(a) Effective Hearing

A hearing in which either or both the parties involved in a case are heard by the court. If the case is mentioned and adjourned or only directions are given or only judgement is delivered by the Court, it would not constitute an effective hearing but will be termed as non-effective hearing.

(b) Uncontested Cases

All suits and appeals are deemed to be 'Uncontested', if these are withdrawn by the plaintiff/ appellant or are dismissed in limine or are otherwise decided by the court ex-parte before the final hearing. No writ petition/revision petition/second appeal (including any interlocutory application connection therewith) will be considered as 'uncontested' if it is decided by the court on preliminary legal objections or is withdrawn by the petitioner/appellant at or during any stage of the final hearing in the presence of the Government or is withdrawn by the Government at the time of its admission.

(c) Identical cases

Two or more cases in which substantially identical questions of law or facts are involved and where the main difference is in the names, addresses of the parties concerned, amount of money involved etc. where the common or identical judgements are delivered irrespective of the fact whether all the cases are heard together or not.

2. In all cases, effective appearance is necessary for the counsel to claim fee.

3. No fee will be payable in cases where no legal work is required to be done e.g. cases in which the interest of the Government of India are to be watched pending instructions, cases regarding transmission of record to the Supreme Court, inspection of the Court record for ascertaining the position of the case of other information needed.

4. No fee will be admissible for preparation but the Government may consider payment of a separate fee for preparation in special case involving arduous work.

5. If the counsel appears at the instance of the Union of India for parties other than the Union of India whose case is not inconsistent with that of the Union of India, he will be entitled to only one set of fee.

6. Appeals, revision of petitions arising from one common judgment or order will be together considered as one case, if they are heard together.

7. When cases argued before a single judge are referred to a Division Bench or to a Full Bench separate fee at the prescribed rate will be paid for appearance before each Bench.

8. In 'Uncontested cases' the fee shall be one-third of the fees otherwise payable but if such a case is later on restored and decided in contest, the remaining two-thirds of the fee will be payable. A case shall be regarded as contested when a decision is given after hearing arguments of both sides.

9. No fee will be payable to the Counsel if an advance notice about the adjournment has been issued or the adjournment of the case has been made at his request due to reasons personal to him.

10. Where two or more cases (but not more than 10 cases) involving substantially identical questions of Law or facts, any one of such cases will be treated as a main case and the others as connected cases and the fees in such cases will be regulated as under, irrespective of the fact whether all the cases are heard together or not: -

(a) When the counsel files separate and materially different affidavits, applications or grounds of appeal etc. in more than one case but the argument is heard in the main case and the other cases are decided accordingly, the Counsel shall be paid the full fee in the main cases and Rs. 180/- in each of the connected cases.

(b) When the main case has been contested as in (a) above, but in the connected cases either affidavit or grounds of any appeal or petition similar to the one in the main case or nothing at all has been drafted by the counsel, he shall be paid the full fee in the main case and Rs. 90/- only in each of the connected cases.

(c) When substantially different affidavits are drafted in each connected case but all the cases are disposed of without contest, the Counsel shall get 1/3rd fees in the main case and Rs. 180/- in each of the connected cases.

(d) When the Counsel has drafted the affidavit, petition or grounds of appeal in the main case and has not drafted them in the connected cases or the drafts the connected cases are substantially similar to one in the main case and the cases are disposed of without contest, the Counsel shall get 1/3rd fee in the main case and Rs. 90/- in each of the connected cases.

11. The fee to the Counsel will be paid by the Department Legal Affairs, Min. of Law Justice and Co. Affairs on presentation of a stamped receipt, and on submission of a copy of the document drafted, if it is a drafting fee, and submission of minutes or gist of proceedings, or a copy of order/judgment where it is necessary in case the claim is for appearance fee. The Counsel shall submit his fee bills within three months from the date on which the fee has accrued.

12. As regard the admissibility and quantum of fee in such cases, the decision of officer-in-charge of the Litigation Section (HC) of the Deptt. of Legal Affair shall be final.

13. In the event of any doubt or difference regarding the fees, the fees determined by the Secretary, Department of Legal Affairs, Ministry of Law, Justice & Co. Affairs, shall be final and binding. He may, by an order in writing relax any of the revisions contained in the scheme.

Sd-
(Krishna Kumar)
Joint Secretary & Legal Adviser to the Govt. of India

Annexure V

No.F.26 (I)/99-Judl.

Government of India

Ministry of Law, Justice & Company Affairs

Department of Legal Affairs

Judicial Section

New Delhi, the 24th September 1999

OFFICE MEMORANDUM

Subject: Revision of fee payable to Senior Central Government Standing Counsel and Additional Central Government Standing Counsel in various High Courts (except High Courts of Delhi, Mumbai, Calcutta, Chennai and Karnataka) and Senior Counsel of various High Courts (except High Courts of Delhi, Mumbai, Calcutta and Chennai)

The question of revision of terms of engagement of Senior Central Government Standing Counsel and Additional Central Government Standing Counsel in various High Courts in India (Except the High Courts of Delhi, Mumbai, Calcutta, Chennai and Karnataka) and Senior Counsel of various High Courts (Except High Courts of Delhi, Mumbai, Calcutta and Chennai) was under consideration of the Government and it has now been decided to revise their terms of engagement as in the Scheme enclosed w.e.f 1.10.1999.

2. For the guidance of various Ministries/Departments, the following clarifications are given for settling the fee bills, TA/DA etc., payable to them for their engagement in various High Courts and its Benches, in District and Subordinate Courts, Tribunals, Commission of enquiry before the Arbitrators/Umpires etc, in the country:-

(a) The Counsel will be engaged only in accordance with the revised terms and conditions applicable to them w.e.f.1.10.1999 and no case for payment of fee at the higher rates than the rates prescribed in the Revised Scheme will be entertained by this Department.

(b) In respect of the cases listed for hearing in various High Courts and its Benches, the counsel will be engaged by the Senior Central Government Standing Counsel, Incharge of the litigation cases, depending on importance of the case, legal issues and financial stakes involved. However, in respect of their engagement in Courts, Commission of Inquiry, Tribunals, etc., outside the Headquarters of the High Court or its Bench concerned, prior approval of the Department of Legal Affairs will be required.

(c) As in the past, Ministry of Law, Justice & Co. Affairs, Department of Legal Affairs, will only be making the payment of monthly retainer to the CGSC and installation and annual rental charges of telephones provided to them.

(d) For appearance in the High Court or its Benches on behalf of the Ministries/ Departments of the Government of India, the expenditure in connection with the fee payable to them,

other miscellaneous and out of pocket expenses will be borne by the Ministry/Department on whose behalf the counsel conducts the cases in the concerned High Court or its Bench. The expenditure relating to TA/DA payable to the Counsel for their appearance in Courts/ Tribunals, Commission of Inquiries etc, outside the Headquarters has to be borne by the Ministry/Department on whose request the Counsel is engaged to conduct the case.

(e) The Counsel will be paid fee at the old rates in respect of their appearance in the High Court etc. and other work done by them prior to 1.10.1999, and at the revised rates in respect of the work done by them on / after 1st October, 1999. However, in cases where the Sr. CGSC / Addl CGSC has put in some appearance before 1.10.99 and some on/ after 1.10.1999, the Counsel will be paid fee in respect of appearance at the revised rates for the entire case. The fee in respect of drafting work etc. will be paid in accordance with the rates, which were applicable to him at the time he completed the drafting work etc.

(f) The present procedure, (as amended from time to time) regarding the High Fee Cases or engagement of Special Panel Counsel will continue to be followed.

(g) The Scheme contained in this OM will also apply to counsel of CAT. However, the fee payable to them will be borne by the Ministries/Departments themselves.

3. All the Ministries/Departments which propose to engage the Counsel to appear in the various High Courts are requested to contact the Senior / Central Government Standing Government Counsel engaged by the Department of Legal Affairs in various High Courts directly. However, for the engagement of the counsel outside the Headquarters at which the High Court or its Bench is located, they may obtain the approval of the Department of Legal Affairs, Ministry of Law, Justice & Co. Affairs, New Delhi. The departments are, however, requested to make arrangements for their travel in consultation with the counsel concerned. They are also requested to ensure that the bills in this respect are made in their names and settled by them directly so that the necessity of reimbursement of expenses incurred by the Counsel later is minimized and they are not put to inconvenience.

4. All the Ministries/Departments are, however requested to ensure that the bills in respect of other expenditure if incurred by the Counsel in connection with TA/DA for their appearance in various Courts etc. outside their Headquarters are sanctioned and money paid to them immediately and in any case not later than a month from the date of receipt of the bills in all respects including fees, TA/DA etc.

5. The Competent Officers of the Ministries /Departments may, under the powers vested in them under the Delegation of Financial Power Rules. 1970. and after satisfying themselves that the fee bill and other bills are in order in all respects may sanction payment to the Counsel and make payment at the earliest without consulting the Department of Legal Affairs Ministry of Law , Justice and Company Affairs. However where the fee bills prepared by the Counsel do not strictly conform to the Scheme or where there is any doubt or difference of opinion between the Administrative Ministry/Department and the Counsel on any particular item of fee etc., the matter may be referred to this Department for clarification. In case where the Counsel has been engaged without settling his terms in consultation with this Department, the

existing procedure of getting the fee bills certified by this Department will continue.

6. If any difference or doubt arises in respect of fee or other bills claimed by the counsel, the matter may be referred to the Law Secretary whose decision shall be final.

Sd-
(Krishna Kumar)
Joint Secretary & Legal Adviser to the
Govt. of India

Copy forwarded to: -

All Ministries/Departments to the Government of India

All Senior Counsel/Central Government Standing Counsel/Additional Central Government Counsels in various High Courts (as per list enclosed)

Department of Expenditure, Ministry of Finance, New Delhi w.r.t. their UO No.9 (11)/99-E.II (B), dt.6.9.99

Legal Adviser, Railway Board, New Delhi (with 5 spare copies)

Joint Secretary (Legal), Department of Revenue, Ministry of Finance, New Delhi (with 5 s/copies)

Ministry of Finance , New Delhi (5 s/copies)

CBDT, Department of Revenue, Ministry of Finance, New Delhi (with 5 s/copies)

Central Agency Section, Litigation (HC/LC) Sections.

Branch Secretariats Mumbai/Calcutta/Chennai/Bangalore

Pay & Accounts Officer, Department of Legal Affairs, New Delhi

Guard File/Judicial Section (with 20 s/copies)

O.L. Section for Hindi translation.

Sd/-
(S.K.Kalra)
Section Officer

Annexure VI

CGSC/Senior/Central Government
Standing Counsel,

Various High Courts

F. No. 26 (1) / 99 - Judl.

Ministry of Law, Justice & Company Affairs Department of Legal Affairs

Judicial Section

Subject:- Revised Scheme containing terms and conditions for the engagement of Senior/Central Government Standing Counsel and Additional Central Government Standing Counsel on behalf of the Government of India in respect of Civil Litigation and such criminal cases as may be entrusted to them in various High Courts in India (except High Court of Delhi, Mumbai, Calcutta, Chennai and Karnataka) effective from 1st October, 1999.

I Scope Of The Scheme

The scheme will be operative in respect of all the civil litigation cases and such criminal cases on behalf of the Government of India (except the Railways and Income-tax Departments) as may be entrusted to the Counsel in various High Courts in India (except High Courts of Delhi, Mumbai, Calcutta, Chennai and Karnataka). However, the counsel will not put in their appearance as a matter of course, in cases relating to Central Sales Tax unless they have been specifically instructed in regard to any particular case.

2. Incharge of Litigation cases:

The Senior Central Government Standing Counsel in a particular High court or its bench, will be incharge of the entire litigation work on behalf of the Government of India before the concerned High Court or its bench, except such of the work for which separate arrangements have been made viz. in respect of Railways and Income-tax departments.

3. Allocation of cases to the Counsel:

Allocation of cases to the Central Government Standing Counsel and Additional Central Government Standing Counsel will be made by the Senior/Central Government Standing Counsel, Incharge of the Litigation work in the concerned High Court or its bench. As far as possible the Senior CGSC will ensure that distribution of work and the other additional Central Government Standing Counsel is fair.

II Definitions

For the purpose of this Scheme, the expressions:

(a) 'Counsel' means and includes the Senior/Central Government Standing Counsel and Addl.Central Government Standing Counsel;

(b) 'Government of India' means and includes the Government of India and Government of a Union Territory;

(c) 'Law Officer' means and includes the Attorney General of India, the Solicitor General of India and Additional Solicitors General of India.

III Standing Counsel and Additional Standing Counsel

1. Senior/Central Government Standing Counsel and Additional Central Government Standing Counsel

There will be one Senior Central Government Standing Counsels and a panel of counsels consisting of Additional Central Government Standing Counsel to conduct the litigation cases on behalf of the Government of India before the concerned High court. The strength of the counsels engaged/empanelled may be determined by the Government of India from time to time.

IV Terms of engagement

1. Initial/further engagement: The term of engagement of the counsel would be for a period of three years or until further orders whichever is earlier. The term may be extended for a further period not exceeding three years, at the discretion of the Government of India.

2. Termination of Engagement: The engagement/empanelment of the counsel would be terminable at any time without assigning any reason.

V Headquarters of the counsel

Headquarters at the place of the usual sitting of High Court or its Bench: The Counsel will locate his Headquarters during the period of his engagement as such) at the place of the usual sitting of the High Court concerned or its Bench as the case may be.

VI Duties

The Counsel shall:

i) appear in the concerned High Court or its Bench in the cases marked to him by the Senior Central Government Standing Counsel, Incharge of the litigation work.

ii) The Senior Central Government Standing Counsel, Incharge of the litigation work in the concerned High Court or its Bench will mark cases to other Additional Central Government Standing Counsel and shall ensure that as far as possible the distribution of work between him and the other Additional Central Government Standing Counsel is fair;

iii) If so required, appear in the District and Subordinate Courts, Tribunals, Commissions of Inquiry before the Arbitrators/Umpires etc. at the Headquarters. He may also be required to appear in the courts, Tribunals, Commission of Inquiry before the Arbitrators/Umpires outside the Headquarters.

iv) When any case attended to by him is decided against the Government of India and/or its Officer give his opinion regarding the advisability of filing an appeal from such a decision;

v) Render all assistance to the Law Officer, Advocate General of the State Government, Special or Senior Counsel, if required to do so, who may be engaged in a particular case

before the High Court, Tribunals, Commissions of Inquiry, before the Arbitrators/Umpires etc.;

vi) Keep the Department concerned informed of the important developments in the case from time to time, particularly with regard to drafting, filing of papers, dates of hearing of the case, supplying copies of judgments etc.;

vii) Furnish to the Branch Secretariat concerned with a particular High Court and the Department of Legal Affairs a periodical statements and reports/returns which may be called for from time to time;

viii) Render detailed account of the advance in the form of out of pocket expenses to the Ministry/Department from whom the advance has been drawn and

(ix) Perform such other duties of a legal nature that may be assigned to him by the Department of Legal Affairs, Ministry of Law, Justice & Co. Affairs, from time to time.

VII Retainer and other perquisites;

1. Retainer payable to Senior Central Government Standing Counsel:

The Senior Central Government Standing Counsel will be paid a monthly retainer of Rs.2,250/- (Rupees Two thousand two hundred fifty only), which will include charges for staff, office rent, postage and all other establishment charges. The Additional Central Government Standing Counsel will not be entitled to any retainer and other perquisites mentioned herein.

2. The Retainer will be paid by the Ministry of Law, Justice & Co. Affairs, Department of Legal Affairs, New Delhi.

3. **Perquisites:** The Senior Central Government Standing Counsel will be provided with a telephone at Government expenses in his chamber, if any. The Government will bear the initial expenses for installation and annual rental charges for the telephone. The charges for the calls in excess of the limits prescribed by the telephone authorities and the trunk calls shall have to be paid by the Counsel himself or recovered from the Department for which the Trunk Call was booked. The Additional Central Government Standing Counsel will not be entitled to the telephone facilities at Government expenses.

VIII Fee payable to the Counsel

1. The fee payable to the Counsel would be as follows: -

(i)	Civil or Criminal Writ Petitions under Articles 226 and 227 of the Constitution or special appeals from orders made in such petitions.	Rs.2250/- per case
	If in case hearing on a Writ Petition goes on for more than 3 days	Rs.375/- per day for every additional day (not exceeding three number) by way of refresher fee.

(ii)	Petition under Articles 132 or 133 of the Constitution in Civil or Criminal cases.	Rs.900/- per case per day subject to a maximum of Rs.1800/- for the case.
(iii)	Original suits	Regulation fees or the fee which the court decree whichever is higher
(iv)	Civil appeals from decrees in Original suits and proceedings except under Articles 226 & 227 of the Constitution, second appeals LPA other than those mentioned in item (i) above and land acquisition appeals to the High Court.	For each case regulation fee or fee fixed by the court, whichever is higher
(v)	Civil or Criminal Revision Petitions	Rs.1050/- per petitions
(vi)	Civil Miscellaneous applications or petitions under the Indian Succession Act, Contempt of Court proceedings and other proceedings of an original nature specifically provided otherwise.	Rs.750/- per case
(vii)	References to the High Court under Sales Tax Act and Banking Company Petitions	Rs.1050/- per case or the amount fixed by the High Court whichever is higher.
(viii)	Company Petitions	To be regulated by the rule contained in Appendix III of the Company (Court) Rules, 1959.
(ix)	Examination of title deals	2.5% of the amount in the transaction such as sale, mortgage etc subject to minimum of Rs.120/- and a maximum of Rs.1200/-
(x)	Civil Miscellaneous petitions Forma Pauporis, Transfer Petitions and other Civil Miscellaneous petitions applications not otherwise provided for.	Rs.300/- per petition.
(xi)	Written opinion other than referred to in VI (iv)	Rs.450/-

(xii)	For drafting pleadings, written statements in suits and counter affidavits/returns/answers to the writ petitions, grounds of appeal and applications for leave to appeal to the Supreme Court	Rs.750/- per pleading
(xiii)	Appeals arising under Section 54, of the Foreign Exchange Regulation Act, 1993.	Rs.1800/- per Appeal
(xiv)	For conducting the arbitration cases of the Central Government before the Arbitrators/Umpires at their Headquarters the Counsel will be entitled to a fee of Rs.240/- for the first hour and Rs.120/- per half hour of hearing, thereafter provided, however, that no fee will be payable where a case is adjourned for reasons personal to him or after advance notice to him.	

(Explanation: If substantially identical affidavits/written statement on similar grounds of appeal applications are drafted in connected cases, only one drafting fee will be payable to the main case and no separate drafting fee will be payable in connected cases).

2. When the Counsel does not argue the case himself but only assists the Law Officers, Advocate General of the State Government or other Special/Senior Counsel, he will be entitled to the same fee as are payable to him deeming that he has appeared and argued the case himself.

3. Fees for appearance in the case in Subordinate Court at the Headquarters will be Rs.750/- for the first day and Rs.450/- for each subsequent day.

IX Out of Headquarters

If the Counsel is required to go out of headquarters in connection with Central Government litigation e.g. for conference with a Senior Counsel, appearance in a court outside the headquarters he will be entitled to a daily fee of Rs.1200/- per day for the days of his absence from the headquarters including the days of departure, intervening holidays and arrival back at the headquarters. But no fee will be paid for the day of departure if he leaves the headquarters after court hours or for the day of arrival if he arrives at the headquarters before the court hours.

2. Travel/Hotel expenses: In addition to the daily fee, the Counsel will also be entitled to travel expenses for travel by air (economy class) or first class by train, road mileage for the journey from his headquarters to the airport/railway station and vice-versa and from the airport/railway station to the place of his stay out of headquarters and vice-versa at the rates admissible to Grade I / Class I Officers of the

Central Govt. He will also be paid a lump sum amount of Rs.300/- as conveyance charges for performing local journey while outside the headquarters. He will also be entitled to reasonable actual expenses for stay in hotel, subject to a maximum of Rs.600/- per day.

X Clerkage

In addition to fees mentioned above, the Counsel will be entitled to 10% of fees subject to a maximum of Rs.1800/- in a case or batch of cases by way of clerkage.

XI Out of pocket expenses

The amount required for court fees at the time of filing a case and other miscellaneous expenses not exceeding Rs.300/- should be obtained by the counsel in advance from the concerned Ministry/Department on whose behalf the counsel conducted the cases in the concerned High Courts. An account of the expenses incurred should be rendered to the Ministry/Department while presenting the final fee bill.

XII Right to private practice and restriction

1. A Counsel will have the right to private practice, which should not, however, interfere with the efficient discharge of his duties as a counsel for the Govt. of India.

2. A Counsel shall not advise any party in or accept any case against the Government of India in which he has appeared or is likely to be called upon to appear for or advise or which is likely to effect or lead to litigation against the Government of India.

3. If the Counsel happens to be a partner of a firm of lawyers or Solicitors it will be incumbent on the firm not to take any case against the Government of India in the concerned High court or any case arising in other Courts out of these cases e.g. appeals and revisions in the High Court or the Supreme Court.

XIII General

The various terms used in this Scheme will have the following meaning:

(a) Effective Hearing

A hearing in which either one or both of the parties involved in a case are heard by the court. If the case is mentioned and adjourned or only directions are given or only judgement is delivered by the Court, it would not constitute an effective hearing but will be termed as non-effective hearing.

(b) Uncontested Cases

All the suits and appeals are deemed to be 'uncontested', if these are withdrawn by the plaintiff/ appellant or are dismissed in limine or are otherwise decided by the Court ex-parte before the final hearing. No writ petition/revision petition/second appeal (including any interlocutory application connected therewith) will be considered as 'uncontested' if it is decided by the Court on preliminary legal objections or is withdrawn by the petitioner/appellant or during any stage of the final hearing in the presence of the Government or is withdrawn by the Government at the time of its admission.

(c) Substantial work

When the case has been admitted by the Court after hearing of preliminary objections or filing of

the affidavits/counter-affidavits etc. by the Counsel, 'substantial' work will be deemed to have been done.

(d) Identical Cases

Two or more cases where substantially identical questions of law or facts are involved and where the main difference is in the names, addresses of parties concerned, amount of money involved etc. where common or identical judgments are delivered irrespective of the fact whether all the cases are heard together or not.

2. In all cases, effective appearance is necessary for the counsel to claim fee.

3. No fee will be payable in cases where no legal work is required to be done e.g. cases in which the interests of the Government of India are to be watched pending instructions; cases regarding transmission of record to the Supreme Court, inspection of the court record for ascertaining the position of the case or other information needed.

4. No fee will be admissible for preparation but the Government may consider payment of a separate fee for preparation in special cases involving arduous work.

5. If the Counsel appears at the instance of the Union of India for parties other than the Union of India whose case is not inconsistent with that of the Union of India, he will be entitled to only one set of fee.

6. Appeals, revision or petitions arising from one common judgement or order will be together considered as one case, if they are heard together.

7. When cases argued before a single judge are referred to a Division Bench or to a Full Bench Separate fee at the prescribed rates will be paid for appearance before each Bench.

8. In 'uncontested cases' the fee shall be one-third of the fees otherwise payable but if such a case is later on restored and decided in contest, the remaining two-third of the fee will be payable. A case shall be regarded as contested when a decision is given after hearing arguments on both sides.

9. No fee will be payable to the Counsel if an advance notice about the adjournment has been issued or the adjournment of the case has been made at his request due to reasons personal to him.

10. Where two or more cases (but nor more than 10 cases) involving substantially identical question of law or facts, any one of such cases will be treated as a main case and the others as connected cases and the fee in such cases will be regulated as under irrespective of the fact whether all the cases are heard together or not.

(a) When the Counsel filed separate and materially difference affidavits, applications or grounds of appeal etc. in more than one case but the argument is heard in the main case and the other cases are decided accordingly, the Counsel shall be paid the full fee in the main case and Rs.150/- in each of the connected cases.

(b) When the main case has been contested as in (a) above but in the connected cases either affidavits or grounds of an appeal or petition similar to the one in the main case or nothing at all has been drafted by the Counsel he shall be paid the full fee in the main case and Rs.75/- only in each of the connected cases.

(c) When substantially different affidavits are drafted in each connected case but all the cases are disposed of without contest, the Counsel shall get 1/3rd fees in the main case and Rs.150/- in each of the connected cases.

(d) When the counsel has drafted the affidavit, petition or grounds of appeal in the main case and has not drafted them in the connected cases or the drafts in the connected cases are substantially similar to the one in the main case and the cases are disposed of without contest, the Counsel shall get 1/3rd fee in the main case and Rs.75/- in each of the connected cases.

11. The fee to the Counsel will be paid by the concerned Department/ Ministry on whose behalf the counsel conducted the case on presentation of a stamped receipt and on submission of a copy of the document drafted, if it is a drafting fee, and submission of minutes or gist of proceedings, or a copy of order/judgment where it is necessary in case the claim is for appearance fee. The Counsel shall submit his fee bills within three months from the date on which the fee has accrued.

12. The fee will be payable in two stages firstly, 1/3rd fee after substantial action has been taken i.e. first stage and secondly the remaining 2/3rd fee after the case has been decided i.e. second stage.

Provided, however, where during the pendency of a proceeding a Counsel is changed for some reason or the other, a fee commensurate to the work done by the outgoing Counsel, not exceeding 1/3rd of the total fee admissible for the case, may be paid. In such an event the balance of fee payable in the case will be paid to the new Counsel after completion of the case. As regards, admissibility and quantum of fee in such cases, the decision of the Officer-in-charge of the Judicial Section of the Department of Legal Affairs shall be final.

13. In the event of any doubt or difference regarding the fees, the fees determined by the Secretary, Department of Legal Affairs, Ministry of Law, Justice & Co. Affairs shall be final and binding. He may, by an order in writing, relax any of the provisions contained in the Scheme.

Sd-

(Krishna Kumar)
Jt. Secretary & Legal Advisor to the Government of India

SENIOR COUNSEL
VARIOUS HIGH COURTS

F.No. 26 (1) / 99 - Judl. dt. 24/9/99
Ministry of Law, Justice & Company Affairs
Department of Legal Affairs
Judicial Section

***

Subject: - Scheme containing terms and conditions for the engagement of Senior Counsel in respect of Civil Litigation cases and Criminal cases as may be entrusted to them (various) High Courts (except High Courts of Delhi, Mumbai, Calcutta and Chennai) w.e.f 1st October, 1999.

***

I Scope of the Scheme

1. The Scheme will be applicable for engagement of Senior Counsel in Civil Litigation Cases and Criminal Cases on behalf of the Government of India as may be entrusted to the Counsel in (various) High Courts (except High Courts of Delhi, Mumbai, Calcutta and Chennai).

2. Engagement: On receipt of a written request from the concerned administrative Ministry for the engagement of Senior Counsel, the Department of Legal Affairs will authorise the concerned Ministry/ Department to engage a Senior Counsel from the panel.

II Definitions

For the purpose of this Scheme, the expressions: -

a) 'Counsel' will mean and include the Senior Counsel

b) 'Government of India' means and includes the Government of India and also the Government of a Union Territory;

c) 'Law Officer' means and includes the Attorney General for India, the Solicitor General of India and Additional Solicitors General of India.

III. Panel of Counsel

Panel of Senior Counsel: There will be a panel of Senior Counsel to conduct cases on behalf of the Government of India before various High Courts.

IV Term of empanelment

1. Empanelment: The term of empanelment of the Counsel would be for a period of three years or

until further orders whichever is earlier.

2. Termination of empanelment: The empanelment of the Counsel would be terminable at any time without assigning any reason.

V Headquarters of the Counsel

Headquarters: The Counsel may locate his headquarters during the period of his empanelment at the place of the usual sitting of High Court or its Bench.

VI Duties

The counsel shall:

(i) appear in the High court in the cases entrusted to him.

(ii) appear in the District and Subordinate Courts, Tribunals, Commissions of Inquiry, before the Arbitrators/Umpires etc. at the headquarters/outside the headquarters if so required by the Government of India;

(iii) render all assistance to the Law Officer, Advocate General of the State Government, Special Counsel, who may be engaged in a specific case before the High Court, Tribunals, Commissions of Inquiry, before the Arbitrators/Umpires etc. if required to do so.

(iv) Perform such other duties of a legal nature, which may be assigned to him by the Department of Legal Affairs, Ministry of Law, Justice & Co. Affairs from time to time.

VII Retainer and other perquisites

The Counsel will not be entitled to the payment of a monthly retainer or to any other perquisites.

VIII Fee payable to the Counsel

The fees payable to the Counsel in the High Courts would be as follows: -

(i)	Suits, writ petitions and appeals, including applications for leave to appeal to Supreme Court in Writ Petitions	Rs.3000/- per case per day of effective hearing. In case of non-effective hearing Rs.500/- per day subject to a maximum of five hearings.
(ii)	Applications for leave to appeal to the Supreme Court other than in Writ Petitions	Rs.1100/- per case
(iii)	Settling pleadings	Rs.900/- per case
(iv)	Miscellaneous Applications	Rs.900/- per case
(v)	Conference	Rs.300/- per conference. Subject

to:

a) For settling pleading- One conference

b) in respect of hearing of Writ matters, Suits, Conference,Appeals and Supreme Court Leave Applications etc.-Three conferences (maximum)

IX. Clerkage

The Counsel will not be entitled to the payment of clerkage on the fees payable to him.

X. Out of Headquarters

1. If the counsel is required to go out of headquarters in connection with Central Government litigation e.g. for conference with Law Officer, Advocate General of the State Government or with a Special Counsel, appearance in a court outside the headquarters, he will be entitled to a daily fee to be decided by the Department of Legal Affairs on the basis of per day of appearance for the days of his absence from the headquarters including the days of departure from Headquarters, intervening holidays and arrival back at the headquarters, but no fee will be paid for the day of departure if he leaves the headquarters after court hours or for the day of arrival if he arrives at the headquarters before the court hours.

2. **Travel/hotel expenses:** In addition to the daily fee, the counsel will also be entitled to travel expenses for travel by air (economy class) or first class by train, road mileage for the journey from his headquarters to the airport/railway station and vice-versa and from the airport/railway station to the place of his stay out of headquarter and vice-versa at the rates admissible to Grade I/Class I officers of the Central Government. He will also be paid a lump sum amount of Rs.300/- as conveyance charges for performing local journeys while outside the headquarters. He will also be entitled to reasonable actual expenses for stay in hotel, subject to a maximum of Rs.600/- per day.

XI Right to private practice and restrictions

A Counsel will have the right to private practice that should not, however, interfere with the efficient discharge of his duties as a counsel for the Government of India.

A Counsel shall not advise any party or accept any case against the Government of India in which he has appeared.

XII General

The various terms used in the Scheme will have the following meaning:

(a) **Effective Hearing**

A hearing in which either or both the parties involved in a case are heard by the court. If the case is mentioned and adjourned or only directions are given or only judgement is delivered by the Court, it would not constitute an effective hearing but will be termed as non-effective hearing.

(b) **Uncontested Cases**

All suits and appeals are deemed to be 'uncontested', if these are withdrawn by the plaintiff/ appellant or are dismissed in limine or are otherwise decided by the court ex-parte before the final hearing. No writ petition/revision petition/second appeal (including any interlocutory application connection therewith) will be considered as 'uncontested' if it is decided by the court on preliminary legal objections or is withdrawn by the petitioner/appellant at or during any stage of the final hearing in the presence of the Government or is withdrawn by the Government at the time of its admission.

(c) **Identical cases**

Two or more cases in which substantially identical questions of law or facts are involved and where the main difference is in the names, addresses of the parties concerned, amount of money involved etc. where the common or identical judgements are delivered irrespective of the fact whether all the cases are heard together or not.

2. In all cases, effective appearance is necessary for the counsel to claim fee.

3. No fee will be payable in cases where no legal work is required to be done e.g. cases in which the interests of the Government of India are to be watched pending instructions, cases regarding transmission of record to the Supreme Court, inspection of the Court record for ascertaining the position of the case of other information needed.

4. No fee will be admissible for preparation but the Government may consider payment of a separate fee for preparation in special case involving arduous work.

5. If the counsel appears at the instance of the Union of India for parties other than the Union of India whose case is not inconsistent with that of the Union of India, he will be entitled to only one set of fee.

6. Appeals, revision or petitions arising from one common judgment or order will be together considered as one case, if they are heard together.

7. When cases argued before a single judge are referred to a Division Bench or to a Full Bench separate fee at the prescribed rate will be paid for appearance before each Bench.

8. In 'Uncontested cases' the fee shall be one-third of the fees otherwise payable but if such a case is later on restored and decided in contest, the remaining two-thirds of the fee will be payable. A case shall be regarded as contested when a decision is given after hearing arguments of both sides.

9. No fee will be payable to the Counsel if an advance notice about the adjournment has been issued or the adjournment of the case has been made at his request due to reasons personal to him.

10. Where two or more cases (but not more than 10 cases) involving substantially identical questions of Law or facts, any one of such cases will be treated as a main case and the others as connected cases and the fees in such cases will be regulated as under, irrespective of the fact whether all the cases are heard together or not: -

(a) When the argument is heard in the main case and the other cases are decided accordingly, the Counsel shall be paid the full fee in the main case and Rs.90/- in each of the connected cases, but subject to a maximum of 10 cases only.

11. The fee to the Counsel will be paid by the concerned Department/Ministry, on presentation of a stamped receipt, and on submission of a copy of the document settled, if it is a setting fee, and submission of minutes or gist of proceedings, or a copy of order/judgment wherever necessary in case the claim is for appearance fee. The Counsel shall submit his fee bills within three months from the date on which the fee has accrued.

12. In the event of any doubt or difference regarding the fees, the fees determined by the Department of Legal Affairs, Ministry of Law, Justice & Co. Affairs, shall be final and binding.

sd-
(Krishna Kumar)
Joint Secretary & Legal Adviser to the Govt. of India

Annexure VIII

Enclosure to OM NO. 27(11)/99-JUDL Dated 24/9/99.
Standing/Addl. Standing Govt. Counsel in District and
Subordinate Courts throughout India.

Ministry of Law, Justice & Company Affairs

Department of Legal Affairs

(Judicial Section)

Subject:- Revised Scheme containing terms and conditions for the engagement of standing/Addl. Standing Government Counsel on behalf of the Government of India in respect of Civil Litigation and such Criminal cases as may be entrusted to them in District and subordinate courts throughout India effective from 1/10/99.

I Scope Of The Scheme

The scheme will be operative in respect of all the civil litigation and such criminal cases on behalf of the Government of India (except the Railways and Income-tax Departments) as may be entrusted to the Counsel in the District and subordinate Courts in India. They will conduct the cases wholly in that court for which they have been specifically appointed. However, the counsel will not put in their appearance as a matter of course, in cases relating to Central Sales Tax unless they have been specifically instructed otherwise, in regard to any particular case.

2. Incharge of Litigation cases: (i) In the case of Delhi/ New Delhi the officer-in-charge of Litigation (LC) Section, Department of Legal Affairs, Justice and Co. Affairs, New Delhi will be incharge of the entire litigation work on behalf of the Govt. of India before the District and subordinate Court at Delhi/ New Delhi except such of the work for which separate arrangement have been made.

(ii) In the case of Chennai, Calcutta, Banglore, Mumbai officer-in-charge of the respective Branch Secretariat at these places will be the in-charge of entire litigation work on behalf of Govt. of India except such of work for which separate arrangement have been made.

(iii) In other places, the Standing Govt. Counsel appointed in District and Subordinate Court will be in-charge of entire litigation work on behalf of Govt. of India before the respective courts. However, he will function under overall charge of designated officer in charge of the concerned Branch Secretariat of the Deptt. of Legal Affair or of the Main Secretariat, as the case may be.

3. Allocation of cases to the Counsel: (i) Allocation of cases to the Counsel in Delhi/New Delhi will be made by the Officer-in-charge of the Litigation (LC) Section, Deptt, of Legal Affair, Min. of Law, Justice and Company Affair, New Delhi or any other officer authorised by him. Allocation of cases at Chennai, Calcutta, Banglore, and Mumbai will be done by officer-in-charge of the Branch Secretariat.

(ii) At other places, the allocation of cases to the Additional Standing Government Counsel will be made by the Standing Government Counsel in the concerned courts who should

ensure that as far as possible the distribution of work amongst the counsel is fair. The Standing Government Counsel will be responsible to submit monthly statements of distribution of briefs/cases and also refer any problem to the concerned Branch Secretariat of the Department of Legal Affairs or to the Main Secretariat, as the case may be.

II Definitions

For the purpose of this Scheme, the expressions:

(a) 'Counsel' will mean and include the Standing/Addl. Standing Govt. Counsel.

(b) 'Government of India' means and includes the Government of India and Government of a Union Territory also; and

(c) 'Law Officer' means and includes the Attorney General for India, the Solicitor General of India and Additional Solicitors General of India.

III Standing Govt. Counsel and Panel of Additional Standing Govt. Counsel

There will be one Standing Government Counsels and a panel of counsels consisting of Additional Standing Government Counsels to conduct the litigation cases on behalf of the Government of India before the District and Subordinate Courts. The strength of the counsel engaged/empanelled may be determined by the Government of India from time to time.

IV Terms of engagement/empanelment

1. Initial/further engagement/empanelment: The term of engagement/ empanelment of the counsel would be for a period of three years or until further orders whichever is earlier. The term may be extended for a further period at the discretion of the Government of India.

2. Termination of Engagement/Empanelment: The engagement/ empanelment of the counsel would be terminable at any time without assigning any reason.

V Headquarters of the counsel

The Counsel will locate his Headquarters, during the period of his engagement/empanelment as such, at the place of the usual sitting of the Court

VI Duties

The Counsel shall

(i) appear in the District and subordinate Court: -

(a) at Delhi/New Delhi in the cases marked to him by the officer-in-charge of Litigation (LC) Section, Deptt. of Legal Affairs, Justice and Co. Affairs, New Delhi at other places for which he has been appointed by the Govt. of India.

(ii) If so required, appear in the Tribunals, Commissions of Inquiry before the Arbitrators/ Umpires etc. at or outside the Headquarters.

(iii) advise the Govt. of India on matter incidental to such litigation and also, when any case

attended to by him decided against the Govt. of India and/or its officers give his opinion regarding advisability of filing an appeal from such a decision.

(iv) render all assistance to the Law Officers, Special or Senior Counsel, if required to do so, who may be engaged in a particular case before the District and Subordinate Court, Tribunals, Commissions of Inquiry, before the Arbitrators/Umpires etc.

(v) keep the designated officers in-charge of Litigation (LC) Section at Delhi/New Delhi and of the Branch Secretariat/Main Secretariat of the Department of Legal Affairs, as the case may be, at other places, and the Department concerned, informed of the important developments in the case from time to time, particularly with regard to drafting, filing of papers, dates of hearing of the case, supplying copies of judgments etc.

(vi) furnish in the cases of Delhi/New Delhi to the Litigation (LC) Section and at other places to the Branch Secretariat/Main Secretariat as the case may be and also to the Department of Legal Affairs, Min. of Law, Justice and Co. Affairs, periodical statements and reports/ returns which may be called for from time to time;

(vii) render detailed account of the advance in the form of out of pocket expenses, in the case of Delhi/New Delhi to Officer-in-charge of Litigation (LC) Section, and in the case of Mumbai, Chennai, Banglore and Calcutta to the Officer-in-charge of the respective Branch Secretariat at those places and at other places to the Ministry/Department concerned and perform such other duties of a legal nature that may be assigned to him by the Department of Legal Affairs, Ministry of Law, Justice & Co. Affairs, from time to time.

VII Retainer and other perquisites;

1. Retainer payable to Standing Govt. Counsel: (i) The Standing Government Counsel will be paid a monthly retainer of Rs. 2000/- (Rupees Two Thousand only), which will include charges for staff, office-rent, postage and all other establishment charges. The Additional Standing Government Counsel will not be entitled to any retainer and other perquisites mentioned herein.

2 The retainer will be paid by the Department of Legal Affairs, Ministry of Law, Justice and Company Affairs, New Delhi.

3. Perquisites: The Standing Government Counsel will be allowed the facilities of telephone and furniture in the office allotted for the use of the Standing Govt. Counsel in the premises of the District and Subordinate Courts for conducting the case on behalf of Govt. of India. Such a facility will be available to him subject to the availability of the premises and the requirement of the Deptt. of Legal Affairs.

The Addl. Standing Govt. Counsel will be entitled to the grant of telephone connection on priority-basis. However the expenditure on registration and installation of the telephone and all other expenditure connected with the utilization of this facility will be borne by the Addl. Standing Govt. Counsel.

VIII Fee payable to the Counsel

A. **The fee payable to the Counsel would be as follows: -**

For hearing item of work		Rates of fee payable
(a)	Suits for effective hearing	i) Rs. 600/- per day for appearance
(b)	Motor Vehicles Act Claim Cases	
(c)	House Rent Cases	ii) Rs. 200/- per day for non-effective hearing with not more than five such hearings in a case.
(d)	Cases under the Public Premises (Eviction of unauthorized occupants etc.)	Note: -Where two or more suits together involve substantially
(e)	Labour CourtsIndustrial Tribunals	identical questions of law or fact, the fee for the first suit shall be paid in
(f)	Cases under the Consumer Protection Act	accordance with the foregoing clauses; for the remaining suits, the
(g)	Cases under the Arbitration Act, etc.	Counsel may, for all the suits, claim at the rate of Rs. 150/- per suit
(h)	Railway Claims Tribunal etc.	subject to a maximum of three cases on the whole irrespective of the fact whether all the suits are heard together or not.

B. **For Drafting**

(i) For drafting written statements and grounds of appeal etc. the Counsel shall be paid a fee of Rs. 500/- per pleading.

(ii) For drafting other pleadings of miscellaneous nature the Counsel shall be paid Rs. 200/- per pleading.

Provided that if substantially identical complaints, pleadings, written statements, affidavits and grounds of appeal are drafted in connected cases, only one drafting fee will be payable in the main case and no separate drafting fee will be paid in connected cases.

C. **For Conferences**

For conferences, the counsel shall be paid a conference fee of Rs. 300/- per conference subject to a maximum of three such conferences for hearing in an individual case, groups of cases.

IX Out of Headquarters

If the Counsel is required to go out of headquarters in connection with Central Government litigation

e.g. for conference with a Senior Counsel, appearance in a court, commission of Inquiry, before the Arbitrators/Umpires etc., outside the headquarters, he will be entitled to a daily fee of Rs.900/- for the days of his absence from the headquarters including the days of departure, intervening holidays and arrival back at the headquarters, but no fee will be paid for the day of departure if he leaves the headquarters after court hours or for the day of arrival if he arrives at the headquarters before the court hours. The daily fee will be in addition to the usual fee as prescribed herein.

2. Travel/Hotel expenses: In addition to the daily fee, the Counsel will also be entitled to travel expenses for travel by air (economy class) or first class by train, road mileage for the journey from his headquarters to the airport/railway station and vice-versa and from the airport/railway station to the place of his stay out of headquarters and vice-versa at the rates admissible to Grade I / Class I Officers of the Central Govt. He will also be paid a lump sum amount of Rs.300/- as conveyance charges for performing local journey while outside the headquarters. He will also be entitled to a reasonable actual expense for stay in hotel, subject to a maximum of Rs.600/- per day.

X Clerkage

In addition to fees mentioned above, the Counsel will be entitled to 10% of fees subject to a maximum of Rs.1800/- in a case or a batch of cases by way of clerkage.

XI Out of pocket expenses

The actual amount required for court fees at the time of filing a case in the District and Subordinate Courts at Delhi and other miscellaneous expenses, a total amount not exceeding Rs.300/- should be obtained by the counsel in advance from the Litigation (LC) Section of the Department of legal affairs, Ministry of Law, Justice and Company Affairs, New Delhi. An account of the expenses incurred should be rendered to that section while presenting the final fee bill.

In the cases of the District and Subordinates Courts in other places, such amount should be obtained from the Ministry/Department concerned and account of the expenses incurred should be rendered to that Ministry/Department while presenting the final fee bill.

XII Right to private practice and restriction

1. A Counsel will have the right to private practice, which should not, however, interfere with the efficient discharge of his duties as a counsel for the Govt. of India.

2. A Counsel shall not advise any party or accept any case against the Government of India in which he has appeared or is likely to be called upon to appear for or advise or which is likely to effect or lead to litigation against the Government of India.

3. If the Counsel happens to be a partner of a firm of lawyers or Solicitors it will be incumbent on the firm not to take up any case against the Government of India in the District and Subordinates Courts or any case arising in other Courts out of these cases e.g. appeals and revisions in such courts or the High Court or the Supreme Court of India.

XIII General

The various terms used in this Scheme will have the following meaning:

(a) **Effective Hearing**

A hearing in which either one or both the parties involved in a case are heard by the court. If the case is mentioned and adjourned or only directions are given or only judgement is delivered by the Court, it would not constitute an effective hearing but will be termed as non-effective hearing.

(b) **Uncontested Cases**

All the suits and appeals are deemed to be 'uncontested', if these are withdrawn by the plaintiff/ appellant or are dismissed in limine or are otherwise decided by the Court ex-parte before the final hearing. No petition/revision petition (including any interlocutory application connected therewith) will be considered as 'uncontested' if it is decided by the Court on preliminary legal objections or is withdrawn by the petitioner/appellant at or during any stage of the final hearing in the presence of the Government Counsel or is withdrawn by the Government at the time of its admission.

(c) **Substantial work**

When the case has been admitted by the Court after hearing of preliminary objections or filing of the affidavits/counter-affidavits etc. by the Counsel, 'substantial' work will be deemed to have been done.

(d) **Identical Cases**

Two or more cases in which substantially identical questions of law or facts are involved and where the main difference is in the names, addresses of parties concerned, amount of money involved etc. and where common or identical judgments are delivered irrespective of the fact whether all the cases are heard together or not.

2. In all cases, effective appearance is necessary for the counsel to claim fee.

3. No fee will be payable in cases where no legal work is required to be done e.g. cases in which the interests of the Government of India are to be watched pending instructions; cases regarding transmission of record to the High Court, inspection of the court record for ascertaining the position of the case or other information needed.

4. No fee will be admissible for preparation but the Government may consider payment of a separate fee for preparation in special cases involving arduous work.

5. If the Counsel appears at the instance of the Union of India for parties other than the Union of India whose case is not inconsistent with that of the Union of India, he will be entitled to only one set of fee.

6. Appeals, revision or petitions arising from one common judgement or order will be together considered as one case, if they are heard together.

7. No fee will be payable to the Counsel if an advance notice about the adjournment has been issued or the adjournment of the case has been made at his request due to reasons personal to him.

8. The fee to the Counsel will be paid by the concerned Department/ Ministry on presentation of a stamped receipt and on submission of a copy of the document drafted, if it is a drafting fee, and submission of minutes or gist of proceedings, or a copy of order/judgment where it is necessary in case the claim is for appearance fee. The Counsel shall submit his fee bills within three months from the date on which the fee has accrued.

9. In the event of any doubt or difference regarding the fees, the fees determined by the Secretary, Department of Legal Affairs, Ministry of Law, Justice & Co. Affairs shall be final and binding. He may by an order in writing, relax any of the provisions contained in the Scheme.

Sd-

(Krishna Kumar)

Jt. Secretary & Legal Advisor to the Government of India

No.F.27 (11)/99-Judl

CHAPTER -V

APPOINTMENT, SERVICE OF PROCESS, EXTENT OF AUTHORITY OF PLEADER AND RELATED MATTERS-GENERAL SCENARIO

5.1 **Recognised agent's right of audience in Court**- The cumulative reading of Rules 1 & 2 of Order III of the Code of Civil Procedure (C.P.C) shows that a recognised agent has a right to appear in Court. Sections 29 to 33 of the Advocates Act speak of right to practice. A question may crop up, therefore, whether Rules 1 & 2 of Order III of Code of Civil Procedure (C.P.C) have offended the Sections 29 to 33 of the Advocates Act. But it is now well settled that a recognised agent for a suitor in a Court has no right of audience and he cannot plead. Sections 29, 32 & 33 of the Advocates Act provide that only advocates are entitled to practice the profession of law. It is no doubt true that under Section 32 of the Advocates Act, Court may permit any person to appear before it in any particular case. The expression "appear" in that section may not conceivably be given a wider interpretation to include the right to appear, plead and address the Court. So recognised agents holding general power-of-attorney cannot be placed in the same position as is held by an advocate having a Vakalatnama in his favour. It may be recalled that Section 32 of the Advocates Act empowers any Court to permit anybody even one who is not an advocate to appear before it in any particular case.

5.2 **Appointment of pleader-** (1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognised agent or by some other person duly authorised by or under a power-of-attorney to make such appointment.

2. Every such appointment shall be filed in Court and shall for the purposes of sub-rule(1), be, deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

(1) [Explanation - For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit,-

(a) an application for the review of decree or order in the suit,

(b) an application under Section 144 or under Section 152 of this Code, in relation to any decree or order made in the suit,

(c) an appeal from any decree or order in the suit, and

(d) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit of obtaining refund of moneys paid into the Court in connection with the suit.]

(2) [(3) Nothing in sub-rule (2) shall be construed-

(a) as extending, as between the pleader and his client, the duration for which the pleader is engaged, or

(b) as authorising service on the pleader of any notice or document issued by any Court other than the Court for which the pleader was engaged, except where such service was expressly agreed to by the client in the document referred to in sub-rule(1)].

(4) The High Court may, by general order direct that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified by the order.

(5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in Court a memorandum of appearance signed by himself and stating-

(a) the names of the parties to the suit,

(b) the name of the party for whom he appears, and

(c) the name of the person by whom he is authorised to appear;

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.]

5.3 Advocates authority to compromise

Although there was a cleavage of opinion amongst various High Courts on the question whether compromise, after the amendment effected by 1976 Amendment Act, signed only by the counsel is valid or not, the Apex Court has settled the controversy by holding that the words " in writing and signed by the parties" necessarily mean and include counsel, possessed of the requisite authorisation by Vakalatnama. Recognising and reiterating the counsel's power to enter into a compromise, the Apex Court in Byran Pestonji Gariwala Vs Union Bank of India (1992) 1 SCC 31 has held as under: -

"Considering the traditionally recognised role of counsel in the common law system, and the evil sought to be remedied by Parliament by the C.P.C. (Amendment) Act, 1976, namely, attainment of certainty and expeditious disposal of cases by reducing the terms of compromise to writing signed by the parties, and allowing the compromise decree to comprehend even matter falling outside the subject matter of the suit, but relating to the parties, the legislature cannot, in the absence of express words to such effect, be presumed to have disallowed the parties to enter into a compromise by counsel in their cause or by their duly authorised agents. Any such presumption would be inconsistent with the legislative object of attaining quick reduction of arrears in court by elimination of uncertainties and enlargement of the scope of compromise.

To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non-resident persons. It has always been universally understood that a party can always act by his duly authorised representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorisation by Vakalatnama, act on behalf of his client. Not to recognise such capacity is not only to cause much inconvenience and loss to the parties personally, but also to delay the progress of proceedings in court. If the legislature had intended to make such a fundamental change, even at the risk of delay, inconvenience and needless expenditure, in would have expressly so stated.

Accordingly, we are of the view that the words 'in writing and signed by the parties', inserted by the C.P.C. (Amendment) Act, 1976, must necessarily mean, to borrow the language of Order III Rule 1 CPC:

"any appearance, application or act in or to any court, required or authorised by law to be made or done by a party in such court, may except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognised agent, or by a pleader, appearing, applying or acting as the case may be, on his behalf:

Provided that any such appearance shall, if the court so directs, be made by the party in person".

However, the Apex Court has further added a word of caution that it would not be prudent for the counsel to act on the implied authority except when warranted by the exigency of situation. The Apex Court observed as under: -

"We may, however, hasten to add that it will be prudent for counsel not to act on implied authority except when warranted by the exigency of circumstances demanding immediate adjustment of suit by agreement or compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom arise. A wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority not integrity is ever doubted. This essential precaution will safeguard the personal reputation of counsel as well as uphold the prestige and dignity of the legal profession."

5.4 Punishment of Advocates for misconduct

The Advocates Act, 1961 has provided for punishment of advocates for misconduct. Various misconducts such as failure to appear in Court, charging of more than agreed fees, misappropriating client's money, changing sides, willful and gross negligence, committing contempt of court, criminal offences, knowingly and deliberately giving false statements etc. have been held to be misconduct by advocates. Section 35 of the Advocate Act provides the authority, manner and the action which can be taken against an advocate guilty of misconduct.

5.5 Supreme Court Advocates: Special Rules

Under the Supreme Court Rules, 1966 as amended by G.S.R. dated 30.7.1983 coming into force with effect from August 1, 1983, subject to the provision of the rules, only those advocates whose names are entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 (Act 25 of 1961) as amended shall be entitled to appear and plead before the Supreme Court (vide Rule 1, Order IV of the Supreme Court Rules....). It has, however, been provided that the Supreme Court may, if for any special reason thinks it desirable to do so, permit any other person to appear before it in a particular case. Under Rule 2 of Order IV of the Supreme Court Rules, 1966 the Chief Justice of the Supreme Court and the Judges may, with the consent of the advocates, designate an advocate as senior advocate if in their opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said advocate is deserving such distinction.

A Senior Advocate shall not –

(i) file a Vakalatnama or act in any Court or Tribunal in India;

(ii) appear without an advocate on record in the Court (i.e., Supreme Court), or in any other Court or Tribunal in India without a junior;

(iii) accept instructions to draw pleadings of affidavits, advise on evidence or do any drafting work of an analogous kind in any Court or Tribunal in India or undertake conveyancing work of any kind whatsoever but this prohibition shall not extend to settling any such matter as, aforesaid in consultation with a junior;

(iv) accept directly from a client any brief or instructions to appear in any Court or Tribunal in India.

Under the aforesaid Rules junior means any advocate other than a senior advocate.

Interpretation of Vakalatnama

Principles - A Vakalatnama under which a lawyer is empowered to act may be general. It may specifically confer wide authority upon a lawyer. A lawyer holding a Vakalatnama can hardly be said to be a person without authority. The rule of construction of document appointing an agent is different from that of the construction of Vakalatnama appointing a counsel.

In case of an agent the document is to be construed strictly and the agent would have only such powers as are conferred expressly or by necessary implication. In the case of counsel the rule is otherwise. The functions and duties of an advocate are not those of an agent simpliciter; and his authority cannot be confined to specific powers which might be enumerated in the Vakalatnama by which he is empowered to act. Thus when in general power-of-attorney an agent is given the power to effect sulah (compromise), it does not authorise an agent to refer the matter to arbitration. A counsel empowered to compromise or submit to arbitration can settle his client's litigation, if he feels that the settlement will be conducive to his client's interest. However, a pleader has no authority to revoke the appointment of arbitrator made by a party without party's instruction and appoint new arbitrator in substitution.

In a case Vakalatnama was given for effecting compromise in X Court but the suit was transferred to Y Court where the compromise was filed, it was held mere misdescription of Court does not vitiate the power.

Fresh Vakalatnama in appeal not necessary –

Once an appointment is made it continues until all proceedings in the suit are ended so far as the client is concerned. For appeal no fresh Vakalatnama is necessary. This position of law stands confirmed by the explanation to sub-rule (2) to Rule 4 of Order III added by the C.P.C. (Amendment.) Act, 1976. Contrary view expressed in Md. Isaq vs Delhi I & S. Co., is no longer a good law in view of this clause of explanation to sub-rule (2) of Order III, Rule 4, C.P.C. If a suit or proceeding is transferred from one Court to a totally distinct Court the authority of an advocate in the original Court would come to an end.

Fresh Vakalatnama in preceding under Rule 9 or 13 of Order IX –

Order III, Rule 4(2) states, interalia, that appointment of a pleader shall continue until all proceedings

in the suit are ended so far as regards the client. Old sub-rule enumeratively catalogued certain proceedings which could be regarded as proceedings in the suit. This catalogue now has been included in Explanation to sub-rule (2). This catalogue which by no means is exhaustive is silent as to proceedings under Order IX, Rule 4 or Rule 9 or Rule 13, C.P.C. Delhi and the Punjab High Court by substitution of the then sub-rule (3) provided specifically that proceedings under Order IX, Rules 4, 9 and 13 should be deemed to be proceedings in the suit. The High Court of Bombay by substituting the then sub-rule (3) provided that proceedings under Order IX, Rules 9, 7 & 13 should be deemed to be proceedings in the suit. But by C.P.C. (Amendment) Act, sub-rule (3) of Order III, Rule 4, now deals with other matters namely when the appointment of pleader should not operate.

On question whether after a suit is disposed of, a fresh Vakalatnama is necessary for a proceeding under Order IX, Rules 4, 9 & 13 C.P.C., the views of various High Courts are not uniform. According to one view it is necessary. According to other view a fresh Vakalatnama is not necessary. The Tripura case held that an advocate duly appointed in the suit can move an application for setting aside ex-parte decree without such application being signed by the defendant - his client.

Advocate's power of withdrawal or to make concession –

As to power of an advocate to withdraw, a counsel has also such power and he can withdraw any application of his client but that can be done only when such a withdrawal is in the interest of his client. If the withdrawal goes against the interest of his client the question of implied authority does not come in. Erroneous concession of an advocate does not bind the client.

Advocate's withdrawal or retirement from case on no instruction - Rule 12 of the Rules framed under the Advocate Act runs as under:

"An advocate shall not ordinarily withdraw form engagements once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client. Upon his withdrawal from a case, he shall refund such part of the fee as has not been earned." So when a lawyer in a case on the date of hearing seeks to withdraw himself from the suit because he had no instruction, the Court must examine that; (1) there is sufficient cause, (2) reasonable and sufficient notice is given by the advocate to his client. When the Court without complying the mandate instantly acts upon the " no instruction statement" Court acts beyond its jurisdiction entailing exercise of revisional jurisdiction.

Advocate as witness in civil suit- Advocate accepting brief and conducting matter knowing fully well that he is likely to be cited as witness in material point cannot subsequently withdraw from suit and appear as witness.

Advocate engaged to plead by apleader holding Vakalatnama : Extent of Authority-

Proviso to Order III, Rule 4, permits a pleader to engage another to plead. An advocate appearing on behalf of another advocate who has filed Vakalatnama can only plead but not act. So any undertaking by such advocate who appears for another without Vakalatnama is not binding on the client. The words "act" and "plead" are different. To plead means to address the Court, to act means doing something as the agent of the principal.

Advocate's lien to retain documents for fees –

Section 171 of the Indian Contract Act runs: ..... attorneys of a High Court may in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain; as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

Under Section 171 of the Indian Contract Act, this right of lien can be exercised by an advocate (the expression attorney including an advocate) in the absence of a contract to the contrary which may be express or implied. In a case plaintiff, a client handed over a promissory note to a counsel for instituting a suit. The counsel withheld the original and filed only a copy thereof. Plaintiff after engaging another counsel and without terminating the power of the former counsel gave him notice to produce the original. Question arose if the former counsel can legally refuse to produce the promissory note on the ground of his fees not being paid. The M.P. High Court held: If it is expressly stipulated that the lawyer will have no lien in respect of particular document, Section 171 of the Contract Act, will not be operative. Similar is the result if the document is delivered in such a circumstance from which an implied contract that the lien shall not be exercised can be inferred. When a document, which is the foundation of plaintiff's claim, is delivered to an advocate engaged for filing the suit and prosecuting it, the necessary inference is that the advocate should file it along with the plaint or at the first hearing of the suit. Since such a document is meant to be produced in Court in the earliest opportunity, the exercise of right of lien over it as contemplated by Section 171, Contract Act, will be excluded by an implied contract to the contrary. So the advocate cannot refuse to produce the document. It may further be borne in mind that this right to lien cannot be exercised by an attorney so long his appointment is continuing. When a solicitor takes up a case and undertakes to conduct it, he is bound whether his client is rich or poor to proceed with due diligence and honestly to prosecute or defend the claim even if he is not put in funds. A solicitor cannot be heard to say in the midst of a case that he would refuse to act any further for his client as he is not paid and at the same time objects to give the papers over to another solicitor. Before ordering discharge of advocate, the Court, however, may insist on all his due fees being paid. The enquiry under Order III, Rule 4, CPC is summary and serious disputed questions of fact cannot be decided under this rule. In the absence of any allegations of misconduct on the part of the Advocate or any dispute regarding fee due or payable, the Court is justified in ordering payment of fee or a reasonable amount of fee if the fee is not fixed, when the client wants to seek leave to terminate the services of the Advocate in the case. A legal practitioner who acts or agrees to act for any person may settle with the said person the terms of his engagement and the fee to be paid for his professional services; that the legal practitioner will be entitled under law to institute and maintain legal proceedings against his client for the recovery of any fee due to him under the agreement or as per the costs taxed by the Court where there has been no pre-settlement of the fee; and that no legal practitioner who has acted or agreed to act shall merely by reason of his status as a legal practitioner be exempt from liability to be sued in respect of any loss or injury due to any negligence in the conduct of his professional duties.

About the lawyer's latches a case of MP High Court (Umarji vs R.C. Bajpai, AIR 1985 MP 267: 1985 Jab LJ 540) deserves mention. In this case an indigent and illiterate widow who lost her husband in a fatal motor accident was to receive a sum of Rs. 36,798/- remitted by insurer of the motor vehicle. The advocate deposited an amount of Rs. 15,000 in the name of the widow. The lady, however, maintaining the plea of not receiving any sum in cash and agitated the matter before Bar Council and later sent a letter to Chief Justice who treated the letter as revisional application and issued notice to the delinquent lawyer. At this stage resiling from his original stand, the advocate paid the widow an amount in cash and a petition by

the widow was filed requesting that the revisional proceeding be dropped. The High Court without dropping the proceeding directed the advocate to pay the rest of the amount to the lady plus compensation. High Court expressed concern over this misconduct of the lawyer concerned.

Concession made by advocate on Law: Duty of the Court –

When a concession by a Counsel is made before the Court there is duty on the Court to look into the question whether such a concession is rightly made and adopt such a concession only if it is satisfied that the concession on a question of law was right. Court is not expected merely to accept an untenable concession on a question of law merely because Counsel appearing in the case makes such a concession.

Service of process on pleader –

Any process served on the pleader who has been duly appointed to act in Court for any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had given to or served on the party in person.

CHAPTER -VI

PROCEDURE IN CIVIL SUITS

Whenever any person's rights are infringed or threatened, he can go to a Civil Court to get appropriate relief. Any man who wants to get such a relief has to know if he can approach the civil Courts, and if so, which of them. The jurisdiction of a Court depends on three factors.

(a) Nature of the claim.

(b) Value of the subject matter.

(c) Local limits.

(a) Nature of claim –

A Civil Court can try cases in which right to property or office is disputed, unless any law expressly or impliedly provides that the Civil Court shall not hear any specific kind of disputes. [Section 9 Code of Civil Procedure (CPC)].

Property in this clause means any tangible or intangible thing in respect of which a person has a legal right. A house, land, books, reputation, copy- right, etc. are all property. If any right in respect of any of these is claimed, the suit will be maintained in a Civil Court.

Some laws expressly bar the authority of the Civil Court to try a particular kind of claim, though the claim may be of civil nature. There are numerous laws which bar the jurisdiction of the Civil Courts and provide that those disputes can be decided by certain tribunals. (Administrative Tribunal Act).

When any law creates a right and also provides for the mechanism to enforce that right, the jurisdiction of the Civil Court is impliedly barred. (Raja Ram Kumar Bhargava Vs. Union of India, Air 1988 S C 752)

(b) Territorial jurisdiction –

Supreme Court exercises its jurisdiction throughout the country. The High Courts have authority within the States for which they function. The District Judges have their jurisdiction in their districts. The lowest courts have their territorial jurisdiction defined by various High Courts. It may have jurisdiction throughout the district or over a part of such district. The court's authority confines itself to the area within its jurisdiction.

The following are some rules to determine the court before which a suit can be filed:

(i) **Suit for immovable property** – Claims in respect of immovable property can be made in the court within the local jurisdiction of which the property or any part of it lies. (Sec. 16 & 17 CPC)

(ii) **Suit in respect of wrongs done to movable property or person** – A claim arising out of a wrong done to a person or movable property can be instituted in the court within the

jurisdiction of which the wrong was committed or where the wrong doer resides or works. (Sec. 19 CPC)

(iii) **Other suits** – Cases other than ones in respect of immovable property and the wrongs to a person or movable property can be filed where the persons or any of the persons against whom the suit is filed, reside or work, or where any part of the cause of action arises. (Sec. 20 CPC).

If the suit is filed at the places where only one or some of the persons against whom it is filed, live, or work, permission of the court has to be obtained if the non-resident parties object.

Cause of action means that set of essential facts, which a person has to prove to entitle him to the relief claimed. (State vs. O.P. Agencies, AIR 1960 S C 1309, Mohd Khalil vs. Mehboob, 1949 P.C. 38)

(c) Pecuniary Jurisdiction – The last determinant of jurisdiction is the value of the subject matter. The pecuniary jurisdiction is extent of the value of subject matter upto which a court has authority to decide cases.

The valuation of a suit is determined according to the rules laid down in the Suits Valuation Act.

Notice – In some cases some laws require a notice to be given to the person against whom a suit is intended to be filed. No suit can be filed against a State or the Central Government or against a public officer in respect of an act done by him in his official capacity, unless a notice is given to the Government concerned or to the officer and a period of two months has expired since service of the notice. (Section 80 CPC). A court may, however, permit a suit to be filed without such notice where an urgent or immediate relief is sought. There are some other laws that also require such a notice. (Sec.77 Railways Act). This notice has to contain the description of the parties, the cause of action and the relief claimed. The fact that a notice has been given should be mentioned in the plaint also.

The proceedings in a Civil Court can be divided into two segments. First the rights are decided in a suit. Then the decision is given affect to in execution proceedings.

Proceedings in suit.

The person who brings any claim before a Civil Court is called "*plaintiff*". The person against whom the claim is preferred is called "*defendant*". The proceedings wherein a court decides the rights of parties are called "suit".

Plaint – A suit is instituted by the plaintiff filing before a court. A plaint is a document containing the description of the plaintiff and the defendant. The facts and propositions of law are necessary to establish the claim and the relief asked for. The person signing and verifying the plaint has to give an affidavit in support of the plaint.

It should be instituted within the time provided by the Indian Limitation Act. A suit for recovery of oral debt can be filed only within three years from the day it falls due. After that period of time, the courts will not entertain the claim.

A plaint has also to bear court fees. If a person does not have means to pay the court fees, he can move an application to the court for permission to file a suit as an indigent person and if such permission is granted, he may not be required to pay any court fees on the plaint or the applications. In appropriate case

the court may also provide a lawyer to such an indigent person.

However, if the plaint does not bear requisite court fees and the plaintiff fails to furnish it within the time allowed by the court, the court may reject the plaint. It can also be rejected if it is barred by any other Law. If the court finds that it does not have jurisdiction to decide it, it may return the plaint for presentation to the proper court.

A minor or person of unsound mind can file a suit only through his guardian, called the next friend. If any of the defendants is a minor or of unsound mind, the plaintiff has to get his guardian appointed to defend the suit on his behalf.

Summons – After a plaint is filed, the court has to inform the defendant about the claim and to call upon him to say what he wants to, on a date fixed. The information is sent by a process called summons. The summons can be served personally on the defendant, on any adult member of his family or an agent authorised to accept them. If the defendant refuses to accept or cannot be found after due diligence, it may be affixed on a conspicuous part of his house or place of work, in presence of witnesses. If the defendant is avoiding service or his whereabouts cannot be known, the court can order the service to be affected by publication, beat of drum or in any other manner. Summons is sent by registered post in addition to any other mode. Copy of plaint has to be sent with summons.

Non-Appearance – If the defendant is searched in any of the above manner and he does not appear on the date fixed for hearing, the court may proceed to decide the suit in his absence. These are called **ex-parte proceedings**. The decision resulting from such proceedings is called an ex-parte judgment. If the defendant can subsequently satisfy the court that he was not really served or that he was prevented from attending the court because of sufficient reason, such a judgment order can be set aside and the case heard again. If the plaintiff is absent on the date of hearing, the suit has to be dismissed. If the plaintiff later shows sufficient cause for his absence, the case may be revived or restored.

The defendant may appear and admit the claim in which case the court shall decide the suit.

Written Statement– If the claim or any part of it is not admitted, the defendant has to put in a written document stating what facts he admits and what facts are not admitted by him. He may give additional facts to support his case that are not admitted by him. This document containing defendant's case is called a written statement. The person signing and verifying the written statement is also required to give his affidavit in support.

Rejoinder

If the plaintiff wants to file a reply against the written statement filed by the defendants (Respondents), he can file so with the permission of the court. Reply to the rejoinder has to be filed within 30 days of filing the rejoinder.

The plaint filed by the plaintiff and the written statement filed by the defendants are called *pleadings*. The same are to be verified by the parties or any person acquainted with the facts given in them, and signed by the party concerned, or his pleader or by a person authorised to sign them. The court can permit amendment of the pleadings at any stage of the case. The parties have to confine their evidence to the facts pleaded.

Issues - After the pleadings of the parties have been received, the court may clarify them by

questioning the parties. The court then identifies the material areas of dispute and frames the questions to be determined in the suit. These questions are called 'Issues'.

Evidence -The party relying on a document as basis of his claim or defence has to file that document with the plaint or the written statement, as the case may be. A list of documents that a party wants to rely upon is also to be filed with the pleadings. All the documents have to be filed on or before the date on which issues are framed. Subsequently they can be filed only with the permission of the court.

On the date fixed for hearing, parties can produce oral evidence by examining witnesses in support of their respective cases. Unless the facts pleaded by him are admitted and the defendant relies on some additional facts.

A witness has to make statement on oath or solemn affirmation. The proceedings are conducted in open court, unless the court, for some reasons, orders that the public shall be excluded, such proceedings where public is excluded, are said to be taking place in Camera.

The court can summon the witnesses at the instance of the parties. The judge has to record the evidence or to distaste it. The statement of the witness is to be read over to him and signed by him.

Commission – If a witness is sick or infirm and cannot appear in the court or lives outside the local limits of its jurisdiction or is otherwise exempted from appearance in court, the court may appoint a person to record the statement or request the court within whose jurisdiction the witness resides to get the statement for the court.

A Commission can also be issued for making local investigation to examine account, to make partition, to hold a scientific investigation, to sell property or to do any other ministerial act. In all cases where Commission is issued, the commissioner so appointed records the statement or does any of the aforesaid to the courts.

Compromise— Parties can also compromise in the case. The compromise should be in writing. The court on being satisfied that it has been lawfully done records the compromise and decides the case in terms of the compromise. The Plaintiff may also withdraw the entire or any part of the claim.

Party's death – If any of the parties dies, the suit can be proceeded with by or against his legal heirs. Bringing a legal heir on record in the place of the deceased party is known as "Substitution". If the substitution is not made within 90 days of the date of death and the suit cannot be continued only by or against the surviving parties, the suit abates and stands dismissed. For sufficient cause shown, the abatement may be set aside on an application moved within 60 days.

Judgment – After receiving all the evidence, the court hears arguments and proceeds to decide the case. The decision has to be in writing, containing the parties case, the issues, the decision on issues with reason for the decision and the relief allowed or that it has been disallowed. This written order is called a judgment. It has to be signed, dated and pronounced in open court.

Decree - It is a formal document prepared on the basis of the judgment. It contains the number of suit, name and description of parties, the relief's claimed and granted.

The court can also direct which party shall bear the costs or any part of the costs. It can also order special costs if it finds that the claim or defence was totally false and was offered only to vex the other party.

Res Judicata -A question decided by a court finally cannot be heard and decided again between the same parties or their successors in interest. This principle is known as res judicata (Section 11 CPC).

If a person ought to have taken a plea but does not do so, the plea shall be deemed to have been raised and disallowed. He cannot be permitted to raise it later.

Injunction - In any suit if any person's property is likely to be damaged, wasted or sold to satisfy some one else's debts, or when any other injury to his right is apprehended, he may apply to the court to issue temporary injunction.

A Civil Court can attach property before judgment or order a party to furnish security during the pendency of a suit in some cases.

Execution Proceedings.

The suit in a Civil Court results in a judgment and a decree. In some cases this terminates the dispute. But in quite a few cases the judgment has to be enforced or executed.

The party in whose favour a judgment is given is called a *decree- holder* (Sec. 2(3) CPC) and the person against whom the judgment is given is called a *'judgment debtor'* (S.2 (10) CPC).

An application for execution has to be made to the court which decided the case (sec.38 CPC, Order XXI Rule 11 CPC). Where a claim is allowed in appeal such an application will be moved in the court where the suit was initially decided (Sec. 37 CPC). It the judgment debtor or his property lies within the jurisdiction of another court, the decree may be sent for execution to that court (S. 39 CPC).

The manner of execution of a decree will depend on what is required to be done under it. If it is for possession of immovable property, the court will get the judgment debtor removed from the property and get the possession delivered to the decree holder (0rderXXI CPC).

If the decree requires judgment debtor to do something and he does not comply with its terms, his property can be attached and he can be arrested and detained. If on expiry of six months the judgment debtor has not complied with the terms of the decree, the property attached can be sold (Order XXI Rule 32 CPC). The court can itself get these acts done.

The court can get the construction raised or demolished or even execute a deed, as the case may be on behalf of the judgment debtor (Order XXI Rules 32(5) & 34 CPC).

A decree for money be executed by

(a) arrest and detention in civil prison, or

(b) attachment and sale of property, or

(c) by appointment of a receiver(S.51 CPC).

Arrest and Detention (Ss.51, 55-59 Order XXI Rule 37-40 CPC)

A person can be arrested and detained in a civil prison to coerce him to pay money due under a decree, but he can be so detained only if,

(a) He is likely to abscond, or has removed, concealed or transferred his property dishonestly to obstruct execution of the decree, or

(b) He has refused or neglected to pay the amount due under the decree, though he has had means to pay, or

(c) The money due under the decree was payable by him as a trustee.

A woman cannot be arrested in execution of a decree for money.

On an application being made to execute a decree by arrest a notice has to be issued to the judgement debtor to show cause why he be not arrested and detained. No person can be arrested and detained where the amount due under the decree is upto Rs. 500/-. A man can be detained up to 6 weeks if the money due is between Rs. 500/- and Rs.1000/-. If the amount exceeds Rs. 1000/- the detention can be for a period upto 3 months.

The expenses for arrest and detention are to be borne by the decree holder. If the amount due is paid before or at the time of arrest, arrest is not made. A judgement debtor is to be released even if arrested or detained as soon as the amount due is paid. The court may also release him if he is seriously ill.

Attachment

Property liable to attachment and sale in execution of decree- (Section 60 of CPC): (1) The following property is liable to attachment and sale in execution of a decree, mainly lands, houses or other buildings, goods, money, bank notes, cheques, bills of exchange, hundis, promissory notes, Govt securities, bonds or other securities for money, debts, shares in a corporation and, same as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgement debtor, or over which or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgement debtor or by another person in trust for him or on his behalf.

Provided that the following property shall not be liable to such attachment or sale, namely: -

(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgement-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(b) tools of artisans, and, where the judgement-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability;

(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant and occupied by him ;

(d) books of account ;

(e) a mere right to sue for damages ;

(f) any right of personal service ;

(g) stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pensions;

(h) the wages of labourers and domestic servants, whether payable in money or in kind ;

(i) salary to the extent of the first one thousand rupees and two thirds of the remainder in execution of any decree other than a decree for maintenance:

Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty four months, be finally exempt from attachment in execution of that decree;

(ia) one third of the salary in execution of any decree for maintenance;

(j) the pay & allowances of persons to whom the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957), applies ;

(k) all compulsory deposits ant other sums in or derived from any fund to which the Provident Fund Act, (26) [1925] (19 of 1925), for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

(ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968) for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment;

(kb) all moneys payable under a policy of insurance on the life of the judgement-debtor;

(kc) the interest of a lease of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;

(l) any allowance forming part of the emoluments of any servant of the Government or of any servant of a railway company or local authority which the appropriate Government may by notification in the official gazette declare to be exempt from attachment, and any subsistence grant for allowance made to any such servant while under suspension.

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(n) a right to future maintenance;

(o) any allowance declared by (32)[any Indian law] to be exempt from liability to attachment or sale in execution of a decree; and

(p) where the judgement debtor is a person liable for the payment of land revenue, any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

Explanation I. - The moneys payable in relation to the matters mentioned in clauses (g), (h), (i), (ia), (j), (l) & (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.

Explanation II - In clause (I) and (ia)], "salary" means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (l), derived by a person from his employment whether on duty or on leave.]

Explanation III - In clause (l) "appropriate Government " means-

(i) as respect any person in the service of the Central Government , or any servant of a Railway Administration or of a cantonment authority or of the port authority of a major port, the Central Government ;

(iii) as respects any other servant of the Government or a servant of any other local authority, the State Government .

Explanation IV - For the purposes if this proviso, "wages' includes bonus, and " labourer" includes a skilled, unskilled or semi-skilled labourer.

Explanation V - For the purposes of this proviso, the expression "agriculturist" means a person who cultivates land personally and who depends for his livelihood mainly on the income form agricultural land, whether as owner, tenant, partner or agricultural labourer.

Explanation VI - For the purposes of Explanation V, an agriculturist shall be deemed to cultivate land personally, if he cultivates land -

(a) by his own labour, or

(b) by the labour of any member of his family, or

(c) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both

(1-A) Not withstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.

(2) Nothing in this section shall be deemed to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment from attachment or sale in execution of decrees for rent of any such house, building, site or land.

Attachment of movable property is affected by actual seizure of the property (Order XXI Rule 43 CPC). Agricultural crop is attached by affixing an order of attachment at the place where the crop is growing or is kept after gathering (Order XXI Rule 44 CPC). A person who has to pay money to the judgement debtor may be required to pay it into the court in execution of a decree. Such a person is called garnishee.

Attachment of immovable property is made by issuing an order prohibiting the judgement debtor from transferring the property or any right in it. It also prohibits all persons from acquiring any such right.

This order is affixed on the property, and on the courthouse. It is also proclaimed by beat of drum or by any other customary mode (Order XXI Rule 54 CPC).

The property attached is sold by public auction after a proclamation of terms of sale is used to satisfy the claim under the decree. The surplus, if any, is payable to the judgement debtor.

A court can also appoint a receiver to act on behalf of the court and take charge of any property. He can collect the profits (Order XL CPC).

All the disputes between the parties relating to the execution, discharge or satisfaction of a decree are to be decided by the executing court. None of the parties can file a suit to get them decide (S.47 CPC).

All the adjustments, or payments made in respect of a decree have to be certified to the executing court, otherwise the court will not consider such payments in executing the decree (Order XXI Rule 2 CPC).

Appeal, Review and Revision-

The law sometimes permits a party dissatisfied with the decision of a court to go to a higher court and ask it to scrutinise the decision. This proceeding is known as an *appeal.*

It is an application by a party to a superior court asking it to set aside or revise a decision of the subordinate court. An appeal can be filed only when law permits it against a specific order. An appeal can also be filed against a final determination of a suit.

An appeal from the decision of the court of the lowest grade lies to the District Judge who can transfer it to the Court of Civil Judge (S.D.). Appeals from the judgements of the court of the Civil Judge (S.D.) lies to District Judge. Appeal from the decision of District Judge lies in the High Court.

An appeal is filed by presenting a memorandum of appeal to the appellate court. It has to bear court fees and be accompanied by copies of judgement and decree appealed from. The party filing the appeal is called 'Appellant'. The court may after hearing the appellant dismisses the appeal if it finds no substance in it. Otherwise it admits the appeal for hearing. The other parties called 'Respondents' are summoned if the appeal is admitted and the record is called. The appellate court may, after hearing the appeal, allow or dismissed it in to, or in party or may sent the case back for retrial which order is called remand. It can also admit further evidence in certain cases (S.96-112 Order 41-45 CPC).

Appeals from Original Decrees

Sections referred are of Code of Civil Procedure (CPC)

96. **Appeal from original decree** - (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court.

(2) An appeal any lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature

cognizable by Courts of Small Causes, when the amount or value of the subject -matter of the original suit does not exceed three thousand rupees.]

Note:-

The bar to an appeal against consent decree is based on the board principle of estoppel. It presupposes that the parties to an action can, expressly or by implication, waive or forego their right to appeal by any lawful agreement or compromise, or even by conduct, K.C. Dora vs Guntreddi Annamanaidu, (1974) 1 SCC 567.

97. **Appeal from final decree where no appeal from preliminary decree** - Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

98. **Decision where appeal heard by two or more Judges** - Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

(2) Where there is no such majority which concurs in a judgement varying or reversing the decree appealed from, such decree shall be confirmed:

Provided that where the Bench hearing the appeal is composed of two or other even number of Judges belonging to a Court consisting of more Judges than those constituting the Bench and the Judges composing the Bench differ in opinion on point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.

(3) Nothing in this section shall be deemed to alter or otherwise effect any provision of the letters patent of any High Court.

100-A. No further appeal in certain cases - Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgement, decision or order of such single judge in such single Judge in such appeal or from any decree passed in such appeal.]

101. Second appeal on no other grounds - No second appeal shall lie except on the grounds mentioned in Section 100.

102. No second appeal in certain suits. – No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject matter of the original suit does not exceed 176[three thousand rupees].

Appeals from Appellate Decrees

100. **Second appeal.** —(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question:

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away of abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

Appeals from Orders

104. **Orders from which appeal lies -** (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of CPC or by any law for the time being in force, from no other orders:

[* * * *]

[(ff) an order under Section 35-A;]

[(ffa) an order under Section 91 or Section 92 refusing leave to institute a suit of the nature referred to in Section 91 or Section 92, as the case may be;]

(g) an order under Section 95;

(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;

(i) any order made under rules from which an appeal is expressly allowed by rules

[Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made.]

(2) No appeal shall lie from any order passed in appeal under this section.

105. **Other orders -**(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction: but, where a decree is appealed from, any error, defect of irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) No appeal shall lie from any order passed in appeal under this section party aggrieved by an order of remand (22)[* * * *] from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

106. **What Courts to hear appeals** - Where an appeal from any order is allowed it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction then to the High Court.

General Provisions relating to Appeals

107. **Powers of Appellate Court** - (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power -

(a) to determine a case finally:

(b) to remand a case:

(c) to frame issues and refer them for trial:

(d) to take additional evidence or to require such evidence to be taken

108. **Procedure in appeals from appellate decrees and orders** - The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals

(a) from appellate decrees, and

(b) from orders made under this Code or under any special or local law in which a different procedure is not provided.

Appeals to the Supreme Court

109. **When appeals lie to the Supreme Court**- (23)[Subject to the provisions in Chapter IV of Part V of the Constitution and such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgement, decree or final order in a civil proceeding of High Court, if the High Court certifies -

(i) that the case involves a substantial question of law of general importance; and

(ii) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.]

110. [Value of subject matter.] Omitted by CPC (Amendment) Act, 1973 (49 of 1973).

111. [Bar of certain appeals]. Rep by the AO 1950.

111A. [Appeals to Federal Court] Rep by the Federal Court Act 1941 (21 of 1941) Section 2.

112. **Savings** -[(1) Nothing contained in this Court shall be deemed -

(a). To effect the power of Supreme Court under Article 126 or any other provision of the Constitution, or

(b) To interfere with any rules made by the Supreme Court , and for the time being in force, for the presentation of appeals to that Court, or their conduct before that Court]

(2). Nothing hearing in contain applies to any matter to criminal or admiralty or vice-admiralty jurisdiction, or to appeals form orders and decrease of Prize Courts.

23.Subs. by Act 19 of 1975, Section 2

Revision –

The High Court and in some states the District Judge also has been given the powers to call for the record of a case decided by any court subordinate to either of them on its own or on application of a party and may set aside or modify or confirm the order. This power can be exercised when no appeal lies from an order that affects some right of the party.

This proceeding is called a revision (S.115 CPC, Sher Singh AIR 1978 SC 1341). In a revision the higher court does not reassess the evidence usually but interferes only when there is any error of law and the court has exercised or has refused to exercise its authority, wrongly. The powers in appeal are wider than in revision (State vs. K.M.C. Abdulla, AIR 1965 SC 1585).

Review-

After an order has been passed, if a party discovers some new facts which he could not find earlier, or when there is a mistake patent in the order, having wrongly quoted evidence or wrongly applied law by mistake, the party aggrieved by such an order, having wrongly quoted evidence or wrongly applied law by mistake, the party aggrieved by such an order can apply to the court which passed order to rectify it. It is called review (Sec. 114 Or. XLVII CPC).

A higher court hears an appeal or a revision while the same court hears review.

CHAPTER -VII

THE OATHS ACT, 1969

(Act No. 44 of 1969) **[26th December 1969]**

INTRODUCTION

The Oath Act, 1969 has been enacted on the recommendations of the 28th Report of the Law Commission, where in the Law Commission has recommended the re-enactment of the Indian Oaths Act, 1873. The Oath Act, 1969 describes the Courts and persons having power to administer oath in discharge of their duties, the person by whom oath is to be made and the Form of Oath and affirmation. The Oath Act, 1969 specifically provides that every person giving evidence on any subject must state the truth on the subject.

An Act to consolidate and amend the law relating to judicial oaths and for certain other purposes.

Be it enacted by parliament in the Twentieth year of the Republic of India as follows:-

1. **Short title and extent –**

(1) This Act may be called the Oaths Act, 1969.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. **Saving of certain oaths and affirmations-** Nothing in this Act shall apply to proceedings before courts martial or to oaths, affirmations or declarations prescribed by the Central Government with respect to members of the Armed Forces of the union.

3. **Power to administer oaths-**

(1) The following courts and persons shall have power to administer, by themselves, or subject to the provisions of sub-section (2) of section 6, by an officer empowered by them in this behalf, oaths and affirmation in discharge of the duties imposed or in exercise of the powers conferred upon them by law, namely:-

(a) all courts and persons having by law or consent of parties authority to receive evidence;

(b) the commanding officer of any military, naval, or air force station or ship occupied by the Armed Forces of the Union, provided that the oath or affirmation is administered within the limits of the station.

(2) Without prejudice to the powers conferred by sub-section (1) or by or under any other law for the time being in force, any court, Judge, Magistrate or person may administer oaths and affirmation for the purpose of affidavits, if empowered in this behalf-

(a) by the High Court in respect of affidavits for the purpose of judicial proceedings , or

(b) by the State Government in respect of other affidavits.

4. **Oaths or affirmations to be made by witnesses, interpreters and jurors** – (1) Oaths or affirmations shall be made by the following persons, namely: -

(a) all witnesses, that is to say, all persons who may lawfully be examined or give, or be required to give, evidence by or to receive evidence;

(b) interpreters of question put to, and evidence given by, witnesses; and

(c) jurors;

Provided that where the witness is a child under twelve years of age and the court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of section 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.

(2) Nothing in this section shall render it lawful to administer, in a criminal proceedings an oath or affirmation to the accused person. Unless he is examined as a witness for the defence, or necessary to administer to the official interpreter of any court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

5. **Affirmation by person desiring to affirm** – A witness, interpreter or juror may instead of making an oath, make an affirmation.

6. **Forms of oaths and affirmation** – (1) All oaths and affirmation made under section 4 shall be administered according to such one of the forms given in the schedule as may be appropriate to the circumstances of the case:

Provided that if a witness in any judicial proceedings desire to give evidence on oath or solemn affirmation in any form common amongst, or held binding by persons of the class to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the court may, if it thinks fit notwithstanding anything herein before contained, allow him to give evidence on such oath or affirmation

(2) All such oaths and affirmation shall, in the case of all courts other than the Supreme Court and the High Courts, be administered by the presiding officer of the court himself, or in the case of a Bench of Judges of Magistrates, by any one of the Judges or Magistrates, as the case may be.

7. **Proceeding and evidence not invalidated by omission of oath or irregularity** – No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the administration of any oath or affirmation or in the form in which it is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

8. **Persons giving evidence bound to state the truth** – Every person giving evidence on any subject before a court or person hereby authorised to administer oaths and affirmations shall be bound to state the truth on such subject.

9. **Repeal and saving** – (1) The Indian oaths Act, 1873 (10 of 1873) is hereby repealed.

(2) Where, in any proceeding pending at the commencement of this Act, the parties have agreed to be bound by any such oath or affirmation as is specified in section 8 of the said Act, then, notwithstanding the repeal of the said Act, the provisional of sections 9 to 12 of the said Act shall continue to apply in relation to such agreement as if this Act had not been passed.

CHAPTER -VIII

INDIAN EVIDENCE ACT 1872

Estoppel

Estoppel-When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration

A intentionally and falsely leads B to believe that certain land belongs to A, and hereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Sec.123. **Evidence as to affairs of State**: No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer or the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Sec.124. **Official communications** : No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

CHAPTER - IX

NOTICE UNDER SECTION 80 [CODE OF CIVIL PROCEDURE (CPC)]

80. [S.424]. *(1) Save as otherwise provided in sub–section (2) no suit shall be instituted against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to or left at the office of –

(a) in the case of suit against the Central Government, except where it relates to a railway, a Secretary to that Government;

(b) in the case of suit against the Central Government where it relates to a railway, the General Manager of that railway;

(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorised by that Government in this behalf;

(c) in the case of suit against any other State Government, a Secretary to the Government or the Collector of the district; and in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and places of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered of left.

**(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the court, without serving any notice as requited by sub-section (1); but the court shall not grant relief in the suit whether interim or otherwise, except after giving to the Government or public officer, as the case may be a reasonable opportunity of showing cause in respect of the relief prayed for in the suit . Provided that the Court shall, if it is satisfied after hearing the parties, that no urgent or immediate relief need be granted in the suit return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suits instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice—

(a) The name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) The cause of action and the relief claimed by the plaintiff had been substantially indicated.

* The section has been restructured by the Amendment Act, 1976 so that the original part of it becomes sub-section (1)

** Added, ibid

No. F. 93 (1)/57-O&M
Government of India
Ministry of Law.
New Delhi, dated the 11th December, 1957

OFFICE MEMORANDUM

SUBJECT: Action on Suit notice under Section 80 of the Code of Civil Procedure.

A party proposing to institute a suit against the Central Government is required, section 80 of the Code of civil Procedure, to give a notice of the proposed suit in writing to the Central Government. The notice is to be served.

(a) In the case of a suit relating to a railway, on the General Manager to that railway, and

(b) In the case of any other suit, on a Secretary to the Government of India.

The object of the suit notice is to provide to the Government an opportunity to reconsider their position in regard to the claim made by the party and, if necessary, to make amends or settle the claim without litigation.

2. Experience shows that the Government is involved in avoidable or fruitless litigation due to failure to examine carefully the position of the Government on service of suit notices. Such litigation apart from entailing wasteful labour and expense brings discredit to Government.

3. The following instructions are accordingly issued for the guidance of the Ministry of Home Affairs etc. in dealing with suit notices by them.

4. On receipt of a suit notice, the department concerned should, without delay, pass it on to the officer, not below the rank of an Under Secretary, dealing with the matter out of which the claim made in the notice arises. The Officer should be personally responsible for examining the claim. If the claim involves references to an attached or a subordinate office, a copy of the notice should be promptly sent to the office concerned for a detailed report. The final action on the notice should, however, be taken by the officer him-self.

5. The officer should make a detailed examination of the claim made in the notice. The notice may be in respect of –

(i) a claim which has already been examined and has been rejected;

(ii) a claim which is still under examination; or

(iii) a claim which has not been examined at all.

6. In regard to a claim of the first category, it should be considered whether any new allegation, which have not been examined before, have been made in the notice. Such new allegations, if any, should be thoroughly examined and it should be considered whether the earlier decision of the Government should be maintained or in any way altered. If the Ministry of Law was not consulted when the previous decision was taken, or if new allegations are made in the notice, the advice of the Ministry of Law should be invariably sought before final decision on the claim is taken.

7. In regard to a claim of the second category, the examination of the claim should be completed with the greatest promptitude and the Ministry of law should be consulted in every case.

8. In regard to a claim of the third category, the claim should be fully examined and the action to be taken should be determined in consolation with the Ministry of Law.

9. In making a reference to the Ministry of Law, a self contained note giving the entire history of the claim and para wise comments on the various allegations made in the notice should be prepared and all relevant documents and materials, duly flagged, should be made available to them. If it is finally decided to reject the claim, a reply may not be advisable but it is possible that in certain cases a reply would be necessary. Advice of the Ministry of Law should be sought before sending a reply. If it is considered that the claim is genuine and ought to be admitted, action should be taken to settle the claim forthwith. If the claim is admitted partly, advice of the Ministry of Law should be sought regarding the form of reply to be sent and regarding action to be taken for settlement of the part claim admitted. If in any odd case, a decision on the claim could not be taken within two months of the receipt of the notice, an interim reply as in the Annexure I should be sent.

10. In all cases of doubt, the advice of the Ministry of Law should be sought before sending a reply to the notices.

11. The party giving the notice would be entitled to institute the suit in respect of which notice is given on the expiration of two months after service of the notice. It is imperative that the examination of the claim should be completed and a final decision taken well in advance of the expiration of the period of the notice. Every suit notice should therefore, be treated as an 'Immediate' reference and dealt with accordingly.

Sd/— (B.N. Lokur)

Joint Secretary and Legal Adviser

To

All Ministries and Departments of the Government of India.

CHAPTER - X

CONTEMPT OF COURT BY GOVERNMENT SERVANT

10.1 Though the sweep and extent of the law relating to contempt of court is very wide, yet an attempt has been made to conceptualise the matrix of the subject and magnify the areas of CONTEMPT JURISPRUDENCE as related to Government servant with the help of illustrations and cases decided in the recent past.

10.2 The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.

10.3 The public has a vital stake in effective and orderly administration of justice. The court has the duty of protecting the interest of community in due administration of justice and so it is entrusted with power to convict for contempt of court to protect and vindicate the rights of the public so that the administration of justice in not prevented, prejudiced, obstructed or interfered with. The law relating to contempt of court has its origin in England. The Constitution of India confers power on Supreme Court Article 129 and on High Courts under Article 215 to punish for contempt, being courts of record.

10.4 Contempt jurisdiction is an independent jurisdiction of original nature.

10.5 Anything which brings the administration of justice into ridicule or disrepute or shakes the confidence of the people or attack on judges calculated to raise sense of disrespect and distrust in decisions rendered amounts to contempt. Abuse of process of court calculated to hamper due course of a proceeding or an orderly administration of justice is a Contempt of Court, though every abuse of the process of Court may not necessarily amount to contempt of Court.

10.6 Any conduct giving an impression that with impunity order of the court would be disobeyed, directly or covert act could constitute contempt. It can be oral, in writing or even by signs or representation which tends to undermine the authority or majesty of court, ridicules or scandalises it or in any manner interfere or prejudice the course of justice or have tendency to do so.

10.7 Withholding of application and not allowing it to reach the Court, making of false affidavit, threat to parties, interference with process, possession of receiver, interference with court viz. abusing, insulting and casting aspersions during course of discharge of duties, intimation and threat to a judge or Magistrate - all obstruct the course of judicial procedure, and hence, may tread in the prohibited realm of Contempt of Court.

10.8 Contumacious and scurrilous attack with the intention of scandalising the court will come within the meaning of 'Criminal Contempt'. The contempt jurisdiction is not to be invoked to enable the party to wreck personal vengeance against the alleged contemnors.

10.9 Contempt jurisdiction should be reserved for what essentially brings the administration of justice into contempt or unduly weakens it as distinguished from a wrong that might be inflicted on private party by

infringing a decreetal order of the court.

10.10 Any threat of filing a complaint against the judge in respect of the judicial proceedings conducted by him in his own court is a positive attempt to interfere with the due course of administration of justice and amounts to criminal contempt. But, the power of punishment for contempt should not be exercised lightly but should be exercised only to uphold the majesty of law and dignity of courts.

10.11 Press has got certain immunity but not to the extent of entering in to prohibited realm of contempt. Fair and accurate report of judicial proceedings would not be contempt. However, comments which have a tendency to prejudice the administration of justice in any pending case when published amount to contempt and so is the case with a publication which has tendency to create prejudices against any party before the case is heard.

10.12 In the case of criminal Contempt, other than a contempt which is committed in the face of the Supreme Court and High Court, these courts can take suo motu proceedings or on the motion made by the Advocate General or any other person with the consent in writing of Advocate General. But in case of criminal contempt of any subordinate court, High court may take cognizance of it if reference is made by subordinate court or motion is made by Advocate General. But High Court will not take cognizance of that contempt of subordinate court which is an offence punishable under Indian Penal Code.

10.13 Principles of natural justice are adhered to in the contempt proceedings but they cannot placed in straitjacket and are at times explicitly and impliedly overruled.

10.14 Contempt is a special subject and the jurisdiction is conferred by a special law and as such the procedure is to be regulated not by the general procedural law, i.e. Code of Criminal Procedure.

10.15 'Civil Contempt' means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court. Failure to comply with or carry out an order of court in favour of a party is a civil contempt.

10.16 An undertaking stops a court from passing any order or direction. The undertaking is given to court by a party including corporation or state, by a person duly authorised for the same in this behalf, or even counsel who has wide authority (unless restricted) the unqualified and unconditional undertaking given orally and recorded by court of given in writing. If violated it would trench in the realm of contempt. But, mere assurance by a Government Advocate to advice the Government is not undertaking. Not only party but also sometimes third person would also be liable for disobedience and breach.

10.17 Contempt proceedings are not substitute for execution proceedings. If it is a matter of execution, resort to contempt of courts act cannot be made. The withdrawal, alteration or modification or Government order transferring an employee after the validity of the order has been upheld by the court, by dismissing the writ petition of the transferred employees does not amount to flouting of courts order and is therefore not contempt.

10.18 Non-implementation of judgement of Supreme Court by the Contemner bank manager on the advice of an advocate, with long standing at bar who also took responsibility for the advice tendered on himself will not make the Bank manager responsible for willfully or deliberately disobeying order of the Supreme court.

10.19 What will be the effect of deliberate suppression of facts? The principle is well settled that if it appears that the petitioner had misled the court by deliberate suppression of fact, in the event, it has the effect of diverting the course of justice. A person, who comes to the court to claim equitable relief, must come (to the court) with clean hands. By reason of such suppression, if any order is obtained, the same can not allowed to be continued.

10.20 The element of intention of intention is a must to contain contempt. The willful conduct is the primary and basic ingredient of such an offence. Disobedience of an order passed by a court having no jurisdiction to pass the order will be a valid defence in contempt proceedings. The plea of difficulties in implementation or impossibility of compliance of order taken during contempt proceedings or seeking clarification or fresh direction would not be a valid defence in every case so as to escape clutches of law.

10.21 The Government Advocates and Standings Counsel for the UOI are allowed to appear and defend Government officials against whom notices for contempt of court are issued. It is open to the UOI to nominate its advocate to appear for its officials in contempt proceedings. The Supreme Court has held that the notings made by officers in the files cannot be made the basis of contempt action against the officer who makes the noting. If the ultimate action does not constitute contempt, the intermediary suggestions and views expressed in the nothing, which may sometimes even amount to ext facie disobedience of the Courts order, will not amount to contempt of court as these noting are not meant for publication.

10.22 In reference to the subject matter, parallel proceedings means proceedings which are initiated and processed with in respect of a matter which are pending before a court. The question arises whether initiation of such proceedings amount to contempt of court? The important test for the purpose whether the issues or the subject matter of the proceedings are the same as those in proceedings before the court.

10.23 Unless the matters before the Commission of Inquiry and the court were identical, and not distinct and separate, there could be no question of any contempt of court. Mere pendency of a criminal or civil proceeding in a court is not a bar to initiation of departmental proceedings in the absence of any direction issued by the court in such proceedings.

10.24 However, even if the issues or subject matter are not exactly the same, but the initiation of proceedings results in 'indirect pressure' brought upon the person concerned in the prosecution of his case in court, the same may amount to contempt.

10.25 In order the bring home to guilt of contempt of court, the initiation of the parallel proceedings must be shown to be calculated to interfere with the administration of justice. A mere filing of an appeal does not automatically operate as stay of the order under appeal and in the absence of such stay being obtained from the appellate court or the court which rendered the order, the order continues to be operative and non-compliance with the order in such circumstances may amount to contempt.

10.26 It will be no defence in a contempt proceeding to plead administrative inconvenience as justification for violating a court order. Signing of an application containing contemptuous language is contempt. Contemptuous statements made against the Supreme Court by public officer in his affidavit and the Advocate who drafts or settles the document, both are liable for contempt. Wrong or misleading statement made to obtain an order interferes with due course of judicial proceedings and amounts to contempt of court.

CHAPTER - XI

CAVEAT

Introduction

Some times a party obtains an ex-parte order on an application without informing the other party of his intentions to make such an application. Under the CPC (Amendment) Act 1976 by incorporating Section 148A, the party willing to prevent such an ex-parte order being passed, has been given a right to intimate the court of his intention to have notice of an intended application by the adverse party by lodging a caveat. A caveat is a caution or warning giving notice to the court not to issue any grant or take any step without notice being given to the party lodging the caveat. It is a precautionary measure which is generally taken against the grant of interim orders by the courts. The person who lodges a caveat is entitled to be heard before an order against him can be passed by the court.

Section 148A of the Code of Civil Procedure deals with the right to lodge a caveat. The provision is reproduced below:

148A. Right to lodge a caveat-

(1) Where an application is expected to be made, or has been made in a suit or proceeding instituted, or about to be instituted, in a Court, any person claiming a right to appear before on the hearing of such application may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledged due, on the person by whom the application has been, or is expected to be, made, under sub-section (1).

(3) Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the Court, shall serve a notice of the application on the caveator.

(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator at the caveator's expense, with a copy of the application made by him and also with copies of any paper of document which has been, or may be, filed by him in support of the application.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period.

CHAPTER - XII

ASSISTANCE TO GOVERNMENT SERVANTS IN LEGAL PROCEEDINGS

1. **Matter unconnected with official duties –**

Government will not be give any assistance to a Government servant or reimburse the expenditure incurred by him in the conduct of proceedings in respect of matters not of, or connected with, his official duties or his official position, irrespective of whether the proceeding were instituted by a private party against the Government servant or vice-versa.

2. **Matters connected with official duties –**

Govt. assistance will, however, be admissible in the conduct of legal proceedings instituted against him or by him regarding matters connected with his official positions or duties, to the following extent; -

(i) Cases filed by Government against the Government servant – No assistance is admissible in such proceedings- civil or criminal. In case the proceedings conclude in the employee's favour, reimbursement of the whole or any reasonable proportion of the expenses will be considered by the Government, if it is satisfied that he was subjected to the strain of the proceedings without proper justification.

(ii) Cases filed by private parties against the Government servant – If it is considered in public interest that government itself should arrange for the conduct of the proceedings, it may do so, on the Government servant agreed to it. Otherwise, reimbursement to the Government servant of reasonable cost incurred by him in conducting his Defence will be considered by the Government, not merely if the proceedings conclude in his favour but on consideration how for the court has vindicated the acts of Government servant. An interest-free advance of Rs. 500/- and advance from his GPF are, however, admissible for the purpose of his defence.

(iii) Cases filed by a Government servant on his being required to vindicate his official conduct – Interest-free advance will be sanctioned to him for the purpose. The extent of reimbursement by the Government will be decided considering to what extent the Court has vindicated the acts of the Govt. servant in the proceedings.

(iv) Cases filed by a Government servant to vindicate his conduct requiring prior sanction of Government - In deserving cases Government will sanction interest-free advance for the conduct of proceedings; but no part of the expenses will be reimbursed by the Government even if the Government servant succeeds in the proceedings. If permission sought for is not refused within 3 months, the Government servant is free to assume that the permission sought for has been granted.

(v) In a civil suit where both the Government servant and the Government are impleaded – The Government servant for his liability to damages for negligence in discharge of official duties of civil nature and the Government for its vicarious liability – If the defence is substantially the same for both – Government will arrange for its employee's defence also.

(vi) Cases filed against the Government servant by another Government servant in respect of matters connected with former's official position/duties- Same as at item (ii) above. This will not apply if he is impleaded as co-respondent in suits against the Government in regard to conditions of service, seniority, etc.

ORDERS REGARDING ASSISTANCE TO GOVERNMENT SERVANTS INVOLVED IN LEGAL PROCEEDINGS

Government servants involved in legal proceedings – provision for legal and financial assistance.

1. The question has been raised whether, and if so under what circumstances, Government should provide legal and financial assistance to a Government servant for the conduct of legal proceedings by or against him. The following decisions, which have been taken in consultation with the Ministries of Law and Finance and the Comptroller & Auditor General, are circulated for information and guidance: -

2. (a) Proceedings initiated by Government in respect of matters connected with the official duties or position of the Government servant- Government will not give any assistance to a Government servant for his defence in any proceedings, civil or criminal, instituted against him, by the State in respect of matters arising out of or connected with his official duties or his official position. Should, however, the proceeding conclude in favour of the Government servant, Government may, if they are satisfied from the facts and circumstances of the case that the Government servant was subjected to the strain of the proceedings without the proper justification, reimburse the whole or any reasonable proportion of the expense incurred by the Government servant for his defence.

(b) Proceedings in respect of matters not connected with official duties or position of the Government servant – Government will not give any assistance to a Government servant or reimburse the expenditure incurred by him in the conduct of proceedings in respect of matters not of, or connected with, his official duties or his official position, irrespective of whether the proceeding were instituted by a private party against the Government servant or vice-versa.

(c) Proceedings instituted by a private party against a Government servant in respect of matter connected with his official duties or position.

(i) If the Government, on consideration of the case, consider that it will be in the public interest that Government should themselves undertake the Defence of the Government servant in such proceedings and if the Government servant agrees to such a course the Government servant should be required to made a statement in writing and thereafter Government should make arrangements for the conduct of the proceedings as if the proceedings had been instituted against Government.

(ii) If the Government servant proposes to conduct his defence in such proceedings himself, the question of reimbursement of reasonable cost incurred by him for his defence may be considered in case the proceedings

conclude in his favour. In determining the amount the cost to be so reimbursed, Government will consider how far the Court has vindicated the acts if the Government servant. The conclusion of the proceedings in favour of Government servant will not by itself justify reimbursement.

To enable the Government servant to meet the expenses of his Defence, Government may sanction, at their discretion, an interest-free advance not exceeding Rs. 500 of the Government servant 's substantive pay for three months, whichever is greater, after obtaining from the Government servant a bond. The amount advanced would be subject to adjustment against the amount, if any, to be reimbursed as above.

The Government servant may also be granted an advance from any provident fund to which he is a subscriber not exceeding three months pay or one-half of the balance standing to his credit, whichever is less; this advance will be repayable in accordance with the rules of the Fund.

(d) Proceedings instituted by Government servant on his being required by Government to vindicate his official conduct – A Government servant may be required to vindicate his conduct in a Court of law in certain circumstances. The question whether costs incurred by the Government servant in such cases should be reimbursed by the Government and if so, to what extent, should be left over for consideration in the light of the result of the proceedings. Government may however, sanction an interest-free advance, in suitable installments, of an amount to be determined by in each case on the execution of a bond by the Government.

In determining the amount of costs to be reimbursed on the conclusion of the proceedings, Government will consider to what extent the Court has vindicated the acts of the Government servant in the proceedings. Conclusion of the proceedings in favour of the Government servant will not by itself justify reimbursement.

(e) Proceedings instituted by a Government servant suo motu, with the previous sanction of the Government to vindicate his conduct arising out of or connected with his official duties or position – If a Government servant resorts to a Court of Law with the previous sanction of the Government to vindicate his conduct arising out of or connected with his official duties or position, though not required to do so by Government , he will not ordinarily be entitled to any assistance, but Government may, in deserving cases, sanction advances in the manner indicated in sub para c(ii) above but no part of expenses incurred by the Government servant will be reimbursed to him even if he succeeds in the proceedings .

(3) Clause (d) of Article 320(3) of the Constitution requires consultation with the Union Public Service Commission of any claim by a Government servant for the reimbursement of the cost incurred by him in depending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his

duty. In other cases consultation with Union Public Service Commission is not obligatory but it will be open to Government to seek the commission's advice, if considered necessary.

(4) The question whether a case falls under Article 320(2)(d) of the constitution so as to require consultation with the commission may at times be difficult to determine. It may be stated generally that consultation is obligatory in a case where a reasonable connection exist between the act of the Government servant and the discharge of his official duties; the act must bear such relation to the official duties the Government servant could lay a reasonable but not a pretended or a fanciful claim that he did in the course of the performance of his duties.

(5) The appropriate authority for taking decision in each case will be the Administrative Ministry of the Government of India concerned or Administrators who will consult the Finance and Law Ministries, where necessary. The Comptroller and Auditor General of India will exercise the powers of and Administrative Ministry in respect of the personnel of the Indian Audit and Accounts Department.

G.I.,M.H.A.,O.M. NO. F. 45/5/53- Ests(A), dated the 8th January, 1959, read with C.I.313 to G.F.R.[G.I.,M.F., File NO. F.23(1)E.,II(A)/76]

Government servants involved in legal proceedings- provision for legal and financial assistance.

Attention is invited to the instructions issued in this Ministry's Office Memorandum No. 45/5/53-Ests(A) dated 8th January 1959, regarding the grant of legal and financial assistance to the Government servant involved in legal proceedings. In connection with those instructions, the following decisions have been taken and are circulated for information and guidance: -

(i) Where, in a civil suit a Government servant sought to be made liable for damages for acts or negligence in discharge of his official duties of civil nature and Government is impleaded on the ground of various liability, the Government should arrange for the Defence of the Government servant also, provided the defence of the Government and the Government servant are substantially the same and there is no conflict of interest. Each case should be examined in consultation with the law officers before undertaking common defence. If it is decided to arrange for the defence of the Government servant, the Government servant should be required to make a statement in writing.

(ii) In cases falling under paragraph 2(d) of the OM referred to above, the amount of interest-free advance will also not exceed Rs.500/- or the Government servant's substantive pay for three months, whichever is greater.

(iii) The authority competent to sanction the advance under paragraph 2(c) (ii), 2(d) and 2(e) of the above OM will be a department of Central Government/an Administrator/the Comptroller and Auditor General in respect of the Indian Audit and Accounts Department:

Provided that a head of Department may sanction such an advance to a Government servant involved in a legal proceedings in cases covered by paragraph 2(d) of the above OM.

(iv) No second advance in respect of the same proceedings will be admissible. There will, however, be no objection to the grant of more than one advance if they relate to different proceedings against the Government servant.

(v) The recovery of the advance may be made in not more than 24 equal monthly installments, the exact number being determined by the sanctioning authority, provided the advance is recovered before the date of retirement. The recovery of the advance should commence on the first issue of pay/leave salary/subsistence allowance following the month in which advance is drawn, the advance is recoverable from each issue of pay/leave salary/ subsistence allowance till it is repaid in full. At the time of reimbursement of legal expenses, the entire balance of advance outstanding against the Government servant should be recovered from the amount reimbursed to him. If the amount reimbursed is less than outstanding balance of advance, the remaining amount will be recovered in installments as already fixed. In the case of grant of more than one advance, the recovery of such advances should run concurrently.

(vi) Where advance under the above instructions is sanctioned to a temporary/quasi permanent Government servant, he should be asked to furnish a security of a permanent Government servant of equivalent or higher.

(vii) The amount of advance sanctioned under the above instructions is debitable under the minor head "Other Advances" subordinate to major head "7610 Loans to Government servant 's under Sector F – "Loans and Advances".

[G.I., M.H.A., O.M. No. 45/1/61-Ests. (A), dated the 26th November, 1963, read with C.L. 313 to G.F.R. [G.I., M.F., File No. 23 (1)-E. II (A)/76]

Retired Government servant involved in legal proceedings - provision of legal and financial assistance.

A question has been raised whether, and if so under what circumstances, Government should provide legal and financial assistance to a retired Government servant for the conduct of legal proceedings instituted against him by a private party in respect of matter connected with his official duties or position before his retirement. This has been considered by Government and it has been decided that the provision contained in paragraph 2(c) of the Ministry of Home Affairs, OM No. 45/5/53-Estt.(A), dated the 8th January, 1959, should be extended also to retire Government servants. Accordingly the provisions contained in the aforesaid paragraphs, with the exception of the provision regarding grant of advance from President Fund will apply also to Government servants who have retired from service, other than those who have been compulsorily retired from service as a measure of punishment. Further, the amount of interest-free advance that may be granted to a retired Government servant will be subject a maximum limit of Rs.500/-.

(2) The provisions regarding consultation with Union Public Service Commission and the authority competent to take decision in each case will the same as those contained in Ministry of Home Affairs, Office Memorandum, dated the 8th January 1959.

[Copy of OM No. 28022/1/75-Estt.(A), dated the 20th January 1977, from the Cabinet Secretariat, Department of Personnel and Administrative reforms].

Legal assistance to Government employees for proceedings instituted in respect of his official duty or position by another Government employee.

The Govt has decided that, where on a consideration of the facts and circumstance of the case, it is considered that it would be in public interest to defend a Government employee in a case filed against him by another Government employee in respect of matters connected with the former's official duties or position, the latter may be treated as a 'private party' and assistance given to the former in terms of paragraph 2 (c) of the Office Memorandum No.45/5/53-Ests.(A), dated the 8th January 1959. But this will not apply to cases in which the Government employee(s) has/have been impleaded as co-respondent(s) by other Government employee(s) in suits against the Government in regard to conditions of service, such as seniority, etc.

(2) Ministry of Finance, etc., are requested to bring the above decision to the notice of all concerned under their control.

(3) In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders are issued in consultation with the Comptroller and Auditor-General.

[Copy of OM No. 28020/1/78-Ests.(A), dated the 6th October, 1978, from the Government of India, Ministry of Home Affairs (Department of Personnel and Administrative reforms), New Delhi]

Government servants involved in legal proceedings - provision for T.A. for journeys for Court attendance.

In connection with Ministry of Home Affairs, O.M. No.F/.45/5/53-ests.(A), dated the 8th January, 1959, dealing with the reimbursement only of legal expenses to Government servants involved in various types of legal proceedings and which does not cover the travelling allowance should be reimbursed in such cases has been examined and it has been decided that reimbursement of travelling expenses in various types of cases referred to in the Ministry of Home Affairs, O.M., dated the 8th January, 1959, should be regulated as indicated below –

(i) Cases falling under paragraph 2(a) of Ministry of Home Affairs, O.M., dated the 8th January, 1959, would be the same as referred to in paragraph 1(ii) of the Government of India's decision (1) below S.R. 153-A. Travelling allowance in such cases may, therefore, be granted on the lines indicated in paragraph 3 of the Government of India's Decision (1) below S.R. 153-A. In cases covered by paragraph 2 (d) also of the Ministry of Home Affairs, O.M. dated the 8th January 1959, travelling allowance may be granted on the same basis.

(ii) In cases covered by paragraph 2(b) and 2(c) of Home Ministry's O.M., dated the 8th January 1959, no travelling allowance would be paid.

(iii) In cases covered by paragraph 2 (c)(I) of the O.M., dated the 8th January 1959, TA as for a journey on tour may be paid to the Government servant concerned. As regards cases

falling under paragraph 2(c)(ii) of that O.M. travelling allowance may be paid on the lines indicated in paragraph 3 of the Government of India's decision (1) below S.R. 153-A, subject to the further condition that the travelling expenses are not decreed by the Court of Law as payable by the plaintiff.

(2) The Comptroller and Auditor-General of India will exercise the powers of an Administrative Ministry in respect of the personnel of the Indian Audit and Accounts Department.

[Copy of O.M. No. 5(13)-E.IV/59, dated the 29th July 1960 and U.O. No. 4623 E. IV(B)/60, dated the 30th December, 1960, from the Government of India, Ministry of Finance, New Delhi.]

CHAPTER - XIII

PRODUCTION OF UNPUBLISHED OFFICIAL RECORDS AS EVIDENCE IN COURTS

Procedure to be followed when a Government servant is summoned by a Court to produce official documents for the purpose of giving evidence

The law relating to the production of unpublished official records as evidence in courts is contained in sections 123, 124 and 162 of the Indian Evidence Act, 1872 (Act I of 1872), which are reproduced below:

"123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of state, except with the permission of the officer at the Head of the Department concerned, who shall give or withhold such permission as he thinks fit.

124. No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interest would suffer by the disclosures.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to court notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the court."

The court, if it sees fit, may inspect the document, unless it refers to matters of State, or, take other evidence to enable to it determine on its admissibility.

Translation of a document:-If for such a purpose it is necessary to cause any document to be translated, the court may if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence; and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

2. For the purpose of section 123 above, the expression "officer at the Head of the department concerned" may be held to mean the officer who is in control of the department and in whose charge records of the department remain. Ordinarily such an officer would be Secretary to the State Government in the case of State Government and the Secretary, Additional Secretary or Joint secretary in charge of Ministry in the case of the Government of India. But in case of attached offices like Directorates, the Director General may be regarded as "the Head of the Department" for the purpose of this Section. Only such an officer should be treated as the authority to withhold or give the necessary permission for the production of official documents, in evidence. In case of part C States the Chief Commissioner or the Lt.-Governor, as the case may be, regarded as the Head of the Department and not his Secretaries.

3. In respect of documents:- (1) emanating from a higher authority, i.e. the Government of India, or the State Government, or which have formed the subject of correspondence with such higher authority, or

(2) emanating from other Governments, whether foreign all members of the Commonwealth, the Head of Departments should obtain the consent of the Government of India or of the State Government, as the case may be, through the usual official channel before giving

permission to produce the documents in court, or giving evidence based on them unless the papers are intended for publication or are of a purely formal or routine nature, when a reference to a higher authority may be dispensed with

4. In the case of documents other than those specified in paragraph 3 above, production of documents should be withheld only when the public interest would by their disclosure the injured, or where disclosure would be injurious to the national defence, or to good diplomatic relations or where the practice of keeping a class of documents secret is necessary for the proper functioning of the public service. Some High courts have pointed out the circumstances under which no such privilege should be claimed, e.g., privilege is not to be claimed on the near ground that the documents are State documents or are official or are mark confidential, or if produced, would result in parliamentary discussion or public criticism or would exposed want of efficiency in the administration or tend to lay a particular department does not wish the documents to be produced is not administration adequate justification for objecting to their production. The High Courts have also observed that refusal to produce documents relating to affairs of State implies that their production will be prejudicial to public interest. Consequently the reasons therefore should be given in administration affidavit Form 1 at the appropriate place.

5. In a case of doubt the Head of Departments should invariably refer to higher authority for orders.

6. These instructions apply equally to cases in which Government is a party to the suit. In such cases, which will depend on the legal advice as to the value of the documents, but before they were produced in court, the considerations stated above must be borne in mind, and reference to higher authority made, when necessary.

6-A. A Government servant other that the Head of Department who is summoned to produce an official document should first determine whether the document is in his custody and he is in a position to produce it. In this connection, it may be stated that all official records are normally in the custody of the Head of Department and it is only under special circumstances that administration official documents can be said to be in the custody of administration individual Government servant. If the document is not in the custody of the Government servant summoned he should inform the court accordingly. If, under any special circumstances, the document is in the custody of the Government servant summoned. He should inform the court accordingly. If, under any special circumstances, the document is in the custody of the Government servant summoned he should next determine whether the document is administration unpublished official record relating to affairs of State and privilege under section 123 should be claimed in respect of it. If he is of the view that such privilege should be claimed or if he is doubtful of the position, he should refer the matter to the Head of the Department, who will issue necessary instructions and will also furnish the affidavit in Form no. 1 in suitable cases. If the document is such that privilege under section 123 could not be claimed but if the Government servant considers that the document is a communication made to him in official confidence and that the public interest would suffer by its disclosure, he should claim privilege under section 124 in Form 11. In case of doubt, he should seek the advice of the Head of the Department. The expression "Head of

the Department" used in this paragraph will have the same meaning as the expression "Head of the Department" in paragraph 2 above.

7. The Government servant who is to attend a court as a witness with official documents should, where permission under section 123 had been withheld, be given administration affidavit in Form no.1 duly signed by the Head of the Department in the accompanying form. He should produce it when he is called upon to give his evidence, and should explain that he is not at liberty to produce the documents before the court, or to give any evidence derived from them. He should, however, take with him the papers which he has been summoned to produce.

8. The Government servant who is summoned to produce official documents in respect of which privilege under section 124 has to be claimed, will make administration affidavit in the accompanying Form no. II. when he is not attending the court himself to give evidence. He shall have sent it to the court along with the documents. The person through whom the documents are sent to court should submit the affidavit to the court when called upon to produce the documents, he should take with him the documents which he has been called upon to produce but should not hand them over to the court unless the court directs him to do so. They should not be shown to the opposite-party.

9. The Head of the Department should abstain from entering into correspondence with the presiding officer of the court concerned in regard to the grounds on which the documents have been called for. He should obey the court's orders and should appear personally, or arrange for the appearance of another officer in the court concerned, with the documents, and act as indicated in paragraph 7 above, and produce the necessary affidavit if he claims privilege.

CHAPTER - XIV

PAYMENT OF CHARGED EXPENDITURE

14.1. What is Charged Expenditure?

1.1 In terms of Article 112 (1) of the Constitution of India, a statement of estimated receipts and expenditure of the Government of India is presented to the Parliament every year. Article 112 (2) provides that the estimate of expenditure embodied in this 'annual financial statement', or Budget, shall show separately;-

(a) the sums required to meet the expenditure described by the Constitution as expenditure charged upon the Consolidated Fund of India; and

(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India.

1.2 The types of expenditure that are charged on the Consolidated Fund of India are enumerated in Article 112 (3) as follows:

(a) the emoluments and allowances of the President and the expenditure relating his office;

(b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of people;

(c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to loans and the service and redemption of debt;

(d) (i) the salaries of allowances and pensions payable to or in respect of Judges of the Supreme Court;

(ii) the pensions payable to or in respect of Judges of the Federal Court;

(iii) the pensions payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of the Constitution exercised jurisdiction in relation to any area included in a Governor's Province of the Dominion of India;

(e) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor General of India;

(f) any sums required to satisfy any judgement, decree or award of any court or arbitral tribunal;

(g) any other expenditure declared by the Constitution or by Parliament by law to be so charged.

1.3 So what basically distinguishes the expenditure charged on the Consolidated Fund of India from other expenditure? The answer is to be found in Article 113, which provides that while that portion of the estimates which relates to expenditure charged upon the Consolidated Fund of India can be discussed in either House of the Parliament, it is not subject to vote, unlike the other expenditure included in the estimates, which is not only open to discussion but also subject to vote. In other words, the Parliament can approve with or without any reduction or refuse to approve any estimate relating to 'other expenditure' but it cannot do so in the case of 'charged expenditure'. In a way, the 'charged expenditure' is in the nature of the supreme form of obligatory expenses of the Government.

1.4 This brings us to the second question. Which is, as to what type of 'charged expenditure' are we concerned with? It will be obvious from the list of types of expenditure given in para 2 above that the only type of charged expenditure that we are concerned with is the expenditure on account of any sums required to satisfy any judgement, decree or award of any court or arbitral tribunal, as provided for in Article 112(3) (f). While this is self-explanatory, it may be useful to refer to Notes 1 & 2 below para 249 and paras 250 to 255 of Chapter 18 of the Defence Accounts Code (see Appendix A) to understand which specific forms of payments are to be treated as charged expenditure.

1.5 What needs to be remembered at all times is that, as a general rule, any payment required to be made in satisfaction of any judgement, decree or award of any court or arbitral tribunal is to be treated as 'charge expenditure'. For further nuances of what would constitute charged expenditure and what would not, Chapter 18 of the Defence Accounts Code can be consulted.

14.2 Provisions contained in Defence Account Code

249. In accordance with Article 112(3) (f) of the Constitution of India, payments made in satisfaction of a judgement, decree or award of any court or arbitral tribunal will be treated as expenditure "Charged" on the Consolidated Fund of India. The character of the "Charged" expenditure lies in the fact that the estimates relating to such expenditure are not submitted to the Vote of Parliament, although it has right of discussion of such estimates.

The under mentioned items of expenditure are also treated as "Charged" on the Consolidated Fund of India.

(i) Interest charges on Fund balances.

(ii) Loan for Water Supply Programmes to State Govt.

Note 1: - Payments made in satisfaction of arbitration awards can be divided into two broad categories. The first class consists of awards, which directs payment of money by one party to the other. The second class consists of awards, which merely declare the rights of the parties or the correct interpretation of particular provisions without containing any consequential directions to make payments etc. The former type of award is called "executory award" the latter is called "declaratory award". It is only in the case of

"executory awards" that amounts are required to be paid to satisfy the same and only in such cases the provisions of Article 112(3) (f) of Constitution will be attracted. Declaratory awards are not executable as such and hence no sum can be said to be required to satisfy the same.

Note 2: - An arbitrator appointed under Section 10A of the Industrial Disputes Act 1947 as a private arbitrator to whom a dispute is referred under an arbitration agreement under the Arbitration Act, 1940, is not a "tribunal" within the meaning of Article 136 of the Constitution since such an appointment is not made by the State but merely, by an agreement of the parties and the State's inherent judicial powers or the trappings of a count are not vested in the Arbitrator and consequently any payment made in satisfaction of the award of such an "arbitrator" cannot be treated as expenditure "Charged" on the Consolidated Fund of India. However, in cases where the award made by a private arbitrator is filed in a Court and a decree is obtained in terms of the award, the expenditure required to satisfy the decree of the court will be expenditure "Charged" on the Consolidated Fund of India as contemplated in Article 112(3)(f) ibid.

250. Awards under the Workmen's Compensation Act of 1923 and awards involving refunds of Revenue and Security Deposits lodged by the Contractors etc. and held in "Public Account" would not, however, attract the provisions of Article 112(3)(f) of the Constitution. However, the payments made in satisfaction of the awards given by the competent authority under the Payment of Wages Act 1936 will be treated as "Charged" since the authority appointed under the Payment of Wages Act has the trappings of a Civil Court and inquiries made by it are in the nature of judicial proceedings and the amount to be paid by the competent authorities under the Act is recoverable as a fine imposed by a Magistrate.

251. In case a contractor delayed receiving payment in due to him, because of a dispute and the amount was transferred to the head "Deposits and subsequently if he obtained a decree from a court for a larger amount than held under the Deposit the entire amount due for payment is to be treated as "Charged" irrespective of the fact that part of the amount might have been voted and held under Deposit. Cases of refunds of "Revenue" and "Security Deposits" under the orders of the Court etc. will be dealt with in the normal manner by compiling such payments either by deduction from the Receipts Heads of accounts to which the amounts were originally credited or by debiting the "Public Account" as the case may be.

In case the security deposit of a contractor is appropriated to Govt. towards liquidated damages and where the case goes into arbitration resulting in award of refund to the contractor, such refunds are to be treated as "Charged" expenditure.

252. The payment of the final bill amount held under the Head "T-Deposits and Advances Part-II Deposits not bearing interest- Miscellaneous Deposits" in the Public Account under the provisions of para 413 Regulations for the M.E.S. will be treated as "Charged" expenditure, if the terms of the decree/ Arbitration award specifically include the payment of such amount. In such cases at the time of making payment of the final bill it would be necessary to reverse the original adjustment entries with reference to which the amount was initially kept under "Deposit". The payment arising out of the award including the amount of the final bill (but excluding refund of Security Deposit and other recoveries if any which were initially adjusted under "Receipt" Heads vide para 252) would be treated as "Charged" expenditure and dealt with accordingly.

253. Where a payment made into the Court is in the nature of a security for staying the execution of the decree, the same would be treated as a "Deposit" and debited to the head Sector "K" – Deposits and Advances- Part-IV-Suspense-Suspense Accounts" in the "Public Account" in the absence of any stay of execution of the decree, the payments made would be "Charged" on the Consolidated Fund of India. The clearance of amount from the "Suspense" by debit to the appropriate service head of account as a "Charged" expenditure will be effected after the requisite funds are allotted by the Ministry of Defence. See para 256 (placed below).

254 (a) Cost of stamp paper when required to be paid by the Government in terms of decree/ arbitration award, will be treated as "Charged" expenditure.

(b) Any expenditure incurred by the Government prior to the announcement of the decree/award either on legal expenses (including lawyer's fees and other incidental expenses), or on stamp paper will not be treated as "Charged", for the reason that at the time the expenditure is incurred, there is no judgement/decree/award and accordingly, the expenditure cannot be held to have been incurred in satisfaction of a judgement etc. The general proposition that expenditure incurred prior to the judgement etc. cannot constitute "Charged" expenditure, does not, however, hold good in respect of expenses incurred by the opposite party prior to the judgement etc. if the judgement etc. when pronounced, contains a direction that the whole or a part of such expenses will be payable by Government to the opposite party. In such cases, the payments being in satisfaction of judgement, decree or award, will require to be treated as "Charged" expenditure in terms of Article 112(3)(f) of the Constitution.

Note: - In certain cases stamp paper is purchased by the Arbitrator (instead of being supplied by Government) who claims payment at a later date. In such cases, if the award contains a direction that the value of stamp paper will be borne by Government, re-imbursement of such value to the Arbitrator will constitute "Charged" expenditure provided it is made in accordance with the terms of, and subsequent to the award.

Satisfaction Of Decrees/Arbitral Awards In Respect Of Compensation For Requisition Or Acquisition Of Properties For Defence

255. (A) Where the decree/award is not directly against the Union of India but is against the State Government, that same will be initially satisfied by the State Government, who will raise debits for the amount paid through the A.G. concerned in the normal manner. No allotment of funds in such cases is necessary from the Central Government budget under "Charged" expenditure.

(b) Where the decree/award is directly against the Union of India, the payment to be made in satisfaction thereof is treated as "Charged" on the Consolidated Fund of India. Prior allotment of funds, will, therefore, be obtained before payments in satisfaction of such decrees/awards are made.

(c) The payment made in satisfaction of the award of Central Administrative Tribunals (constituted under the Administrative Tribunal Act 1985) should be treated as expenditure

"Charged" on the Consolidated Fund of India within the purview of article 112(3)(f) the Constitution. Where, however the CAT grants a Government servant some relief such arrears paid to satisfy the judgement will constitute expenditure "Charged" on the Consolidated Fund of India. The subsequent salary will be deemed to be governed by the normal rules of Government relating to pay scales, increment etc. of Government employees and hence will not constitute "Charged" expenditure but will be treated as "Voted" expenditure as usual.

(d) Where the court decrees payment of rent, at a higher rate from a retrospective date, the arrear payment of higher rent to satisfy the decree will be treated as "Charged Expenditure". Where the agreements are modified or revised after the court decree by mutual consent of the parties concerned, the subsequent recurring payments will be treated as "Voted" Expenditure in general, when made in pursuance of fresh agreement.

CHAPTER - XV

SUMMONING OF CIVILIAN WITNESS AND DOCUMENTS BY COURT MARTIALS AND COURT OF INQUIRIES

The question whether officials of Defence Accounts Department can be summoned as witnesses by the convening officer or presiding of courts of inquiry under Army Act, 1950 was examined. The legal advice received in this regard is reproduced below :

Section 135 of the Army Act 1950 was amended by Act 37 of 1992 w.e.f. 6.9.1992 vide which, word 'or Courts of Inquiry' was added. For the sake of convenience, Section 135 is being reproduced as under :-

'135 Summoning witnesses; (1) The convening officer, the presiding office of a court-martial (or courts of inquiry), the judge - advocate or the commanding officer of the accused person may, by summons under his hand, require the attendance, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

That the bare reading of the said Section shows that the Convening Officer or Presiding Officer of Court of Inquiry may, by summons, under his hand, require the attendance of any person either to give evidence or to produce any document or other thing.

A careful reading of the said Act will show that the word 'any person' used in Section 135 is not meant any person other than what has been defined in Section 2 of the said Act. For the sake of convenience, Section 2, which deals with person subject to Army Act, is being reproduced as under:-

2. Persons subject to this Act - (1) The following persons shall be subject to this Act wherever they may be, namely:-

(a) officers, junior commissioned officers and warrant officers of the regular Army.

(b) persons enrolled under this Act:

(c) persons belonging to the Indian Reserve Forces;

(d) persons belonging to the Indian Supplementary Reserve Forces when called out for service or when carrying out the annual test;

(e) officers of the Territorial Army, when doing duty and enrolled persons of the said Army when called out or embodied or attached to any regular forces, subject to such adaptations and modifications as may be made in the application of this Act to such persons under subsection (1) of section 9 of the Territorial Army Act, 1984 (56 of 1948);

(f) persons holding commissions in the Army in India Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;

(g) officers appointed to the Indian Regular Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces.

That the civilians or officers of other cadre or any category, which is not included in the definition of the persons subject to Army Act, cannot be summoned by Convening Officer or Presiding Officer of Courts of Inquiry.

Consequently, in view of Section 135 and Section 2 of the Army Act, 1950, officers of CGDA are not covered under the definition of 'persons' who are subject to Army Act and thus, cannot be summoned as witness. As far as the Air Force Act and the Navy Act are concerned, in these Acts, no amendment has been done as such, under the Section where summoning powers have been given to Court of Inquiry.

CHAPTER - XVI

VARIOUS COMMISSIONS

16.1 INTRODUCTION

(i) Under Article 340 of the Constitution of India, the President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(ii) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(iii) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

(iv) Composition and Functioning of some of the important Commissions set up by different Acts of Parliament is reproduced in the following pages.

16.2 HUMAN RIGHTS COMMISSION

16.2.1 The Protection of Human Rights Act, 1993 is to provide for the constitution of a National Human Rights Commission. State Human Rights Commission in States and Human Rights Courts for better protection of Human Rights and for matters connected therewith or incidental thereto.

Short title, extent and commencement

(1) This Act may be called the Protection of Human Rights Act, 1993.

(2) It extends to the whole of India.

Provided that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters relatable to any of the entries enumerated in List I or List lll in the Seventh Schedule to the Constitution as applicable to that State.

(3) It shall be deemed to have come into force on the 28th day of September 1993

16.2.2 THE NATIONAL HUMAN RIGHTS COMMISSION

Constitution of a National Human Rights Commission

The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

The Commission shall consist of:

(a) a Chairperson who has been a Chief Justice of the Supreme Court;

(b) one Member who is or has been, a Judge of the Supreme Court;

(c) one Member who is, or has been, the Chief Justice of a High Court;

(d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.

There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.

The headquarters of the Commission shall be at Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

Appointment of Chairperson and other Members

(1) The Chairperson and other Members shall be appointed by the President by warrant under his hand and seal.

Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of

(a) The Prime Minister —Chairperson

(b) Speaker of the House of the People — Member

(c) Minister in-charge of the Ministry of Home Affairs in the Government of India — Member

(d) Leader of the Opposition in the House of the People — Member

(e) Leader of the Opposition in the Council of States — Member

(f) Deputy Chairman of the Council of States — Member

Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

(1) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Committee.

Removal of a Member of the Commission

(1) Subject to the provisions of sub-section (2), the Chairperson or any other Member of the

Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.

(2) Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment out side the duties of his office: or

(c) is unfit to continue in office by reason of infirmity of mind or body; or

(d) is of unsound mind and stands so declared by a competent court; or

(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

Term of office of Members

(1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years. Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of India or under the Government of any State.

Member to act as Chairperson or to discharge his functions in certain circumstances

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Terms and conditions of service of Members

The salaries and allowances payable to, and other terms and conditions of service of, the Members

shall be such as may be prescribed. Provided that neither the salary and allowances nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment.

Vacancies, etc., not to invalidate the proceedings of the Commission

No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.

Procedure to be regulated by the Commission

(1) The Commission shall meet at such time and place as the Chairperson may think fit.

(2) The Commission shall regulate its own procedure.

(3) All orders and decisions of the Commission shall be audited by the Secretary-General or any other officer of the Commission duly authorised by the Chairperson in this behalf.

Officers and other staff of the Commission

(1) The Central Government shall make available to the Commission :

(a) an officer of the rank of the Secretary to the Government of India who shall be the Secretary-General of the Commission; and

(b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.

(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed.

Functions and Powers of the Commission

The commission shall perform all or any of the following functions, namely:

(a) Inquire, suo-moto or on a petition presented to it by a victim or any person on his behalf, into complaint of–

(i) Violation of human rights or abetment thereof; or

(ii) Negligence in the prevention of such coalition, by a public servant;

(b) Intervene in any proceedings involving any allegation of violation of human rights pending before a court with the approval of such court;

(c) Visit, under intimation to the State Government, any jail or any other institution under control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;

(d) Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) Review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) Study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) Undertake and promote research in the field of human rights;

(h) Spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

(i) Encourage the efforts of non-governmental organisations and institutions working in the field of human rights;

(j) Such other functions as it may consider necessary for the promotion of human rights.

Powers relating to Inquiries – (1) The commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil procedure, 1908, and in particular In respect of the following matters, namely:

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the measuring of Section 176 and Section 177 of the Indian Penal Code.

(3) The commission or any other officer, not below the rank of a Gazetted officer, specially authorised in this behalf by the commission may enter any building or place where the commission has reason to believe that any document relating to the subject matter the inquiry may be found, and may seize, any such document or take extracts or copies therefrom subject to the provisions of Section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.

(4) The commission shall be deemed to be a civil court and when any offence as is described in Section 175, Section 178, Section 179, Section180 or Section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under Section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceedings before the Commission shall be deemed to be a judicial proceedings within the meaning of Sections 193 and 228, and for the purpose of Section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Investigation – (1) The commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

(2) For the purpose of investigating into any matter pertaining to the inquiry , any officer or agency whose services are utilised under sub-section(1) may, subject to the direction and control of the Commission, -

(a) Summon and enforce the attendance of any person and examine him.

(b) Require the discovery and production of any document, and

(c) Requisition any public record or copy thereof from any office.

(3) The provision of Section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are utilised under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

Statement made by persons to the commission – No statement made by a person in the course of giving evidence before the commission shall subject him to, or be used against him in, any civil or criminal proceedings except prosecution for giving false evidence by such statement.

Provided that the statement –

(a) is made in reply to the question which he is required by the Commission to answer, or

(b) is relevant to the subject matter of the inquiry.

Persons likely to be prejudicially affected to be heard – If, at any stage of the inquiry, the Commission–

(a) considers it necessary to inquire into the conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry;

it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this Section shall apply where the credit of a witness is being impeached.

Procedure

Inquiry into Complaints – The commission while inquiring into the complaints of violations of human rights may –

(i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it:

Provided that –

(a) if the information or report is not received within the time stipulated by the commission, it may proceed to inquire into the complaint on its own;

(b) if on receipt of information or report, the commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

(ii) Without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

Procedure with respect to Armed Forces – (1) Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the Armed Forces, the Commission shall adopt the following procedure, namely: -

(a) it may, either on its own motion or on receipt of petition, seek a report from the Central Government ;

(b) after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government

(2) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.

(3) The Commission shall publish its report together with its recommendations made to the

Central Government and the action taken by that Government on such recommendations.

(4) The commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representative.

18. **Steps after Inquiry** – The Commission may take any of the following steps upon the completion of an inquiry held under this Act , namely:

(1) where the inquiry discloses, the Commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;

(2) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(3) recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

(4) subject to the provisions of clause (5) provide a copy of the inquiry report to the petitioner or his representative;

(5) the commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

(6) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

16.3 THE NATIONAL COMMISSION FOR THE SCHEDULED CASTES AND SCHEDULED TRIBES

16.3.1 Introduction

The National Commission for the Scheduled Castes and Scheduled Tribes has been set up w.e.f 08th June 1990. Article 338 of the Constitution was amended by the Sixty Fifth Amendment to have a high level five member Commission for a more effective arrangement in respect of the constitutional safeguards for Scheduled Castes & Scheduled Tribes than a single Special Officer. The functions of the said Commission cover measures that should be taken by the Union or any State for the effective implementation of safeguards and other measures for the protection, welfare and socio-economic development of the Schedule Caste & Schedule Tribes and to entrust to the Commission such other functions in relation to the protection, welfare & development and advancement of Schedule Caste & Schedule Tribe as the President may, subject to

any law made by Parliament, by rule specify. The report of the said Commission is laid before Parliament and the Legislatures of the states.

16.3.2 Composition and Appointment of Members of Commission

Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice- Chairperson and five other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

The Commission shall have the power to regulate its own procedure.

16.3.3 Duties of the Commission-

(a) To investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes & Scheduled Tribes under this Commission or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes & Scheduled Tribes;

(c) To participate and advise on the planning process of socio-economic development of the Scheduled Castes & Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(d) To present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) To make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes; and

(f) To discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) above, have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.

The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes and Scheduled Tribes";

16.4 THE NATIONAL COMMISSION FOR MINORITIES

16.4.1 Genesis & Composition

The setting up of Minorities Commission was envisaged in the Ministry of Home Affairs Resolution dated 12.01.1978, which specifically mentioned that, "despite the safeguards provided in the Constitution and the laws in force, there persists among the Minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote National Integration the Government of India has made effective institutional arrangements for the enforcement and implementation of all the safeguards provided for the Minorities in the Constitution, in the Central and State Laws and in the government policies and administrative schemes enunciated from time to time." The Minorities Commission was set up to safeguard the interests of minorities whether based on religion or language. The Commission was renamed as National Commission for Minorities and the first statutory Commission was constituted on 17.05.1993.

Constitution of the National Commission for Minorities

The Commission consists of a Chairperson, a Vice Chairperson and five Members nominated by the Central Government from amongst persons of eminence, ability and integrity, provided that five Members including the Chairperson shall be from amongst the Minority communities.

Term of office & conditions of service of Chairperson & Members

1) The Chairperson and every Member shall hold office for a term of three years from the date he assumes office.

2) The Chairperson or a Member may, by writing under his hand addressed to the Central Government, resign from the office of Chairperson or, as the case may be, of the Member at any time.

3) The Central Government shall remove a person from the office of Chairperson or a Member referred to in sub-section (2) if that person-

a) becomes an undischarged insolvent;

b) is convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude.

c) becomes of unsound mind and stands so declared by a competent court;

d) refuses to act or becomes incapable of acting;

e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or

f) has, in the opinion of the Central Government, so abused the position of Chairperson, or Member, as to render that person's continuance in office detrimental to the interests of Minorities or the public interest; Provided that no person shall be removed under this clause until that person has been given a reasonable opportunity of being heard in the matter.

4) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination.

5) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed.

16.4.2 Functions of the Commission

(1) The Commission shall perform all or any of the following functions, namely: -

(a) evaluate the progress of the development of minorities under the Union and States;

(b) monitor the working of the safeguards provided in the constitution and in laws enacted by Parliament and the State Legislatures;

(c) Make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or State Government;

(d) Look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities;

(e) Cause studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal;

(f) Conduct studies, researches and analysis on the issues relating to socio-economic and educational development of minorities;

(g) Suggest appropriate measures in respect of any minority to be undertaken by the Central Government or the State Government;

(h) Make periodical or special reports to the Central Government on any matter pertaining to minorities and in particular difficulties confronted by them; and

(i) Any other matter that may be referred to it by the Central Government.

(2) The Central Government shall cause the recommendations referred to in clause (c) of sub-section (1) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(3) Where any recommendations referred to in clause (c) of sub-section (1) or any part thereof with which any State Government is concerned, the Commission shall forward a copy of such recommendation or part to such State Government who shall cause it to be laid before the legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the state and the reasons for the non-acceptance, if any, of any such recommendation or part.

The Commission shall, while performing any of the functions mentioned in sub-clauses (a), (b) and (d) of sub-section (1), have all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely: -

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents; and

(f) any other matter which may be prescribed.

Procedure

(1) The Commission shall meet as and when necessary at such time and place as the chairperson may think fit.

(2) The Commission shall regulate its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorised by the Secretary in this behalf.

Annual Report

The Commission prepares its annual report giving a full account of its activities during the previous financial year and forwards a copy thereof to the Central Government.

Annual Report and audit report to be laid before Parliament

The Central Government shall cause the Annual Report together with a memorandum of action taken on the recommendations contained therein, in so far as they relate to the Central Government, and the reasons for the non-acceptance, if any, of any of such recommendations and the audit report to be laid, as soon as may be after the reports are received, before each House of Parliament.

Chairperson, Members & staff of Commission to be public servants

The Chairperson, Members and employees of the Commission shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

16.5 THE NATIONAL COMMISSION FOR WOMEN ACT, 1990

16.5.1 Introduction

Established under the National commission for Woman Act 1990, the Commission's functions include to study and monitor constitutional and other laws relating to women, review existing legislation and to investigate complaints concerning the rights of women. In order to discharge its functions, the Commission has the powers of a civil court to take evidence and issue summons. Under Section 3(3) of the Protection of Human Rights Act 1993, the chairperson of the National Commission for Women is deemed to be a member of the National Human Rights Commission for the discharge of certain human rights functions.

Committees of the Commission:

(1) The Commission may appoint such committees as may be necessary for dealing with such special issues as may be taken up by the Commission from time to time.

(2) The Commission shall have the power to co-opt as members of any committee appointed under sub-section (1) such number of persons, who are not members of the Commission, as it may think fit and the persons so co-opted shall have the right to attend the meetings of the committee and take part in its proceedings but shall not have the right to vote.

(3) The persons so co-opted shall be entitled to receive such allowances for attending the meetings of the committee as may be prescribed.

Procedure to be regulated by the Commission:

(1) The Commission or a committee thereof shall meet as and when necessary and shall meet at such time and place as the Chairperson may think fit.

(2) The Commission shall regulate its own procedure and the procedure of the committees thereof.

(3) All orders and decisions of the Commission shall be authenticated by the Member-Secretary or any other officer of the Commission duly authorised by the Member-Secretary in this behalf.

16.5.2 Functions of the Commission

1. The Commission shall perform all or any of the following functions, namely: -

   (a) Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other law;

   (b) Present to the Central Government, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(c) Make in such reports, recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or State;

(d) Review, form time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations;

(e) Take up the cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities;

(f) Look into complaints and take suo moto notice of matters relating to-

(i) deprivation of women's rights;

(ii) non-implementation of laws enacted to provide protection to women and also to achieve the objective of equally and development;

(iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women and take up the issues arising out of such matters with appropriate authorities;

(g) call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;

(h) undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity;

(i) participate and advise on the planning process of socio-economic development of women;

(j) evaluate the progress of the development of women under the Union and any State;

(k) inspect or cause to be inspected a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, if found necessary;

(l) fund litigation involving issues affecting a large body of women;

(m) make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil;

(n) any other matter which may be referred to it by the Central Government.

(2) The Central Government shall cause all the reports referred to in clause (b) of sub-section

(1) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and reasons for the non-acceptance, if any, of such recommendations.

(3) Where any such report or any part thereof relates to any matter with which any State Government is concerned, the Commission shall forward a copy of such report or part of such report to the State Government who shall cause it to be laid before Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of the recommendations.

(4) The Commission shall, while investigating any matter referred to in clause (a) or sub-clause (I) of clause (f) of sub-section (1), have all the powers of a civil court trying a suit and, in particular, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing Commissions for the examination of witnesses and documents; and

(f) any other matter which may be prescribed.

16.6 COMMISSION FOR PERSONS WITH DISABILITIES

16.6.1 Government of India have been very keen and conscious to address problems faced by persons with disabilities. A meeting to launch the Asian & Pacific Decade of Disabled Persons, 1993-2002, was convened by the Economic & Social Commission for Asia and Pacific in Beijing from 1-5 December 1992, which adopted the proclamation on the full participation and equality of people with disabilities in the Asian & Pacific region. India is a signatory to the said proclamation.

Therefore, in order to give effect to the proclamation on full participation and equality of people with disabilities in the Asia and Pacific region, the Government of India passed "THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995". This was published on 1st January 1996 and was notified on 7th February 1996.

The Persons with Disabilities Act basically enlists facilities that persons with different types of disabilities would be entitled to and the responsibilities and obligations which are placed on the Government of India, State Governments, local bodies, public and private sector enterprises, and others in this behalf. It broadly includes measures for prevention and early detection of disabilities, education, employment, social security, research and manpower development, barrier-free access and preferences and facilities

that are available to such persons and the action which needs to be taken to avoid any discrimination against persons with disabilities.

It has been provided in the Act that there shall be a Chief Commissioner at the Govt. of India level and a Commissioner in each State of the Union/UT, who would be broadly responsible to: -

- Monitor the utilization of funds disbursed by the Central Government and compliance of various provisions of the Act.
- Safeguard the rights and facilities made available to persons with disabilities. Coordinate work of the State Commissioners.
- The Chief Commissioner is authorized; on his/her own motion or on the application of any aggrieved person, or otherwise look into complaints relating to.
- Deprivation of rights of persons with disabilities.
- Non-implementation of laws, rules, byelaws, instructions issued by appropriate authorities for the welfare and protection of rights of the disabled.
- The Chief Commissioner is vested with the power of a civil court under the Code of Civil Procedure. The proceedings before the Chief Commissioner shall be judicial proceedings within the meaning of Section 193 and 223 of the IPC and it shall be deemed to be a Civil Court for this purpose.
- The Chief Commissioner shall prepare and submit an Annual Report to the Government, which shall cause it to be laid in each House of Parliament along with the recommendations and action taken thereon.

CHAPTER - XVII

GENERAL INSTRUCTIONS IN RESPECT OF HANDLING OF COURT CASES

17.1. Procedure in accepting the Notices/Documents issued by the Registry

The Central Administrative Tribunal has brought to the notice of the Department of Personnel and Training that the Ministries/Departments while receiving Notices/Documents from the Tribunal are not giving details of the receipt obtained by them. It is hereby requested that the name and designation of the officer receiving the Notices/Documents along with office stamp, date of receipt and time of receipt may be indicated on the acknowledgement slips before these are returned to the Central Administrative Tribunal.

[Dept, of Per. & Trg., OM No.A-11019/21/88-AT Dated the —August, 1988]

17.2. Correspondence can be had only with the Counsel for defence and not directly with the Chairman or Registry

It has come to the notice of the Government that Officers of the Central Government are writing letters to the Chairman and the Registry of the Central Administrative Tribunal in connection with the cases pending in the Tribunal. It is hereby clarified that such direct correspondence with the Chairman or the Registry of the Tribunal by the Departments concerned is not correct. It is, therefore, brought to the notice of all concerned that the Ministries/Departments concerned may contact the Counsel appointed for defending the case for all the information relating to the pending cases.

[Dept, of Per. & Trg., OM No.A-11019/36/87-AT Dated the 24/03/87]

17.3. Filing of reply and other documents by the respondents

1. Each respondent intending to contest the application, shall file in triplicate the reply to the application and the documents relied upon in paper-book form with the Registry within one month of the service of notice of the application on him.

2. In the reply filed under sub-para (1), the respondent, shall specifically admit, deny or explain the facts stated by the applicant in his application and may also state such additional facts as may be found necessary for the just decision of the case. It shall be signed and verified as a written statement by the respondent or any other person duly authorized by him in writing in the same manner as provided for in Order 6, Rule 15 of the Code of Civil Procedure, 1908 (5 of 1908).

3. The documents referred to in sub-para (2) shall also be filed alongwith the reply and the same shall be marked as R1, R2, R3 and so on.

4. The respondent shall also serve a copy of the reply along with documents as mentioned in sub-para (1) on the applicant or his legal practitioner, if any, and file proof of such service in the Registry.

5. The Tribunal may allow filing of the reply after the expiry of the prescribed period.

6. The Tribunal may permit the parties to amend the pleadings in the same manner as provided under Order 6, Rule 17 of the Code of Civil Procedure, 1908 (5 of 1908).

17.4. **Filing of written statements before the Benches to be as expeditiously as possible**

1. The Central Administrative Tribunal has been established with the primary objective of speedy disposal of applications filed by the Government employees in respect of their grievances relating to service matters. It is understood from the Central Administrative Tribunal that in a number of cases Central Government Department to whom notices were issued did not put in their appearance on the dates fixed. While the Central Administrative Tribunal could, in such cases proceed to hear the cases ex parte; they had given adjournments to facilitate the Government Departments to comply with the requirements.

2. Ministries/Departments should ensure that notices received from the Central Administrative Tribunal are complied within time to enable it to dispose of applications filed before it as expeditiously as possible. An adjournment of hearing should be sought for only on ground, which could be fully justified. If, for any reason, the Ministry/Department is unable to file their statement on the date fixed, they should at least produce, through a responsible officer, the required records/documents before the Tribunal on the date fixed as it would be possible for the Tribunal to proceed with the case further on the basis of the records/ documents even without a written statement.

[Dept, of Per. & Trg., letter No.A-11019/38/85-AT, dated 25/02/87]

17.5. **Timely submission of the statements and appearance by Standing Counsel or authorised officer before the Benches on the due dates to be ensured**

The Central Govt. Counsels to present the cases of Central Govt. Departments before the Benches of the Central Administrative Tribunal wherever such Departments are respondents have been appointed and their names communicated to the Ministries / Departments, etc.

As per Section 23(2) of the Administrative Tribunals Act, 1985, as amended by the Administrative Tribunals (Amendment) Act, 1986, "the Central Govt. may authorise one or more legal practitioners or any of its officers to act as Presenting Officers and every person so authorised by it may present its case with respect to any application before a Tribunal". In view of this, it has been decided that whenever an application is filed before a Bench of the Tribunal and a Central Govt. Department/Ministry or one of the officers under its control is made a respondent, having regard to the importance of the case concerned, the concerned Department/Ministry can also decide to present the case before the Bench of the Tribunal directly through one of its officers who should be at least a Group 'A' officer of the Central Govt. If such a decision is taken, the concerned Ministry/Department may write to the Register of the Bench of the Tribunal authorising a particular officer to present the case on behalf of the Govt. Wherever the concerned Ministry/Department feels having regard to the number of cases which are pending before the Bench of the Tribunal, that it will be advantageous to authorise one of its officers to present the cases before the Tribunal, a letter authorising a particular officer in a general way may be issued to the Registrar of the concerned Bench of the Tribunal. Since the power to authorise an officer to present the case before the Tribunal vests only with the Central Govt, it is necessary to obtain the approval of the Minister concerned for such authorisation unless this power is delegated to the Secretary of the Ministry/Department.

It has also been brought to the notice of this Ministry that in certain cases where notices were issued by the Central Administrative Tribunal, the concerned Govt. Departments, failed to appear before the Bench on the date fixed or deputed a very junior official with records. It is enjoined that whenever notice is received from the Tribunal (unless it is decided to present the case through an officer) the Department concerned should immediately get in touch with the Senior Standing Counsel/Standing Counsel attached to the particular Bench for handling the case himself or allotting the case to one of the Additional Standing Counsels attached to the Bench. The concerned Govt. Counsel should be fully briefed. It should be ensured that the Govt. Counsel or the authorised officer appears before the Bench of the Tribunal on the fixed date.

All the Ministries/Departments and the subordinate offices should ensure timely submission of the statements before the Benches of the Tribunal and appearance of the Central Govt. Counsels or authorised departmental representative on the date fixed for hearing of cases.

[Dept. of Per. & Trg., OM No.11019/58/85—AT, dated 26/05/86]

17.6. **Primary responsibility for contesting cases will be with the Administrative Ministry / Department concerned on the basis of specific facts and circumstances relevant to them**

While the Ministry of Personnel, Public Grievances and Pensions is the nodal Ministry responsible for formulating policies and framing rules relating to pension and other retirement benefits, seniority, promotion, fixation of pay, disciplinary proceedings, reservation for Scheduled castes, Scheduled Tribes, Ex-Servicemen, etc., and other aspects of personnel administration, the Administrative Ministries/Departments are responsible for considering individual cases of Govt. servants and issuing appropriate orders thereon in accordance with the rules and instructions on the subject and in consultation with the Ministry of Personnel, Public Grievances and Pension, if considered necessary.

2. A number of petitions are filed by Government servants in various Courts and the Central Administrative Tribunals challenging the orders issued by the Administrative Ministries/Departments in individual cases in which the relevant rules and instructions on the basis of which the impugned orders have been issued are also challenged. In most of these cases, the Ministry of Personnel, Public Grievances and Pensions is also impleaded as one of the respondents for the reason that the relevant rules and instructions were issued by the Ministry or that the impugned orders were issued in consultation with the Ministry.

3. The existing practice is that, in all such cases the petitions are contested by the Administrative Ministry/Department concerned both on its behalf and on behalf of the Ministry of Personnel, Public Grievances and Pensions, if necessary, in consultation with the latter. However, recently in some cases, the Administrative Ministries/Departments insisted on the Ministry of Personnel, Public Grievances and Pensions defending the Government action on the ground that the rules/instructions challenged in the petitions were issued by that Ministry. This is not the correct procedure to follow. Since each case is to be contested on the basis of the specific facts and circumstances relevant to it, the Administrative Ministry/Department will be in a better position to defend the case. If, however, any clarification is required on the interpretation or application of the rules or instructions relevant to the case, the concerned Department in the Ministry of Personnel, Public Grievances and Pensions may be approached for that purpose. Reference relating to pension and other retirement benefits may be made to the Department of Pensions and Pensioners' Welfare and in respect of other matters relating to seniority, promotion, etc., the Department of Personnel, and Training may be consulted. This Ministry will continue to handle such references with utmost priority.

However, the primary responsibility for contesting such cases on behalf of the Government will be that of the Administrative Ministry/Department concerned.

[Dept, of Per. & Trg., OM No 20036/23/88-Estt.(D) dated 6/01/89]

17.7. **Rates of fees for Counsels in various High Courts as revised applicable to Counsels presenting cases before CAT**

The DOP&T is receiving references seeking clarifications regarding the rates of fee payable to the Central Government Counsel/Advocates appointed as Presenting Officers in various Benches of the Central Administrative Tribunal. It may be reiterated that the rates of fees for the Counsels appointed for presenting the cases before Central Administrative Tribunal will be the same as prescribed and applicable to Central Government Counsels/Panel Counsels in High Court. The Ministry of Law and Justice, the Appointing authority of Counsels in various High Courts, have since revised the rates of fees for Counsels in various High Courts with effect from 1.4.1987. The revised rates of fees for Counsels in High Courts will henceforth, be applicable to Counsels appointed for presenting the cases before the Central Administrative Tribunal.

(Dept. of Per. & Trg., O.M. No. A-11019/38/85-AT, dated 13/06/88)

17.8. **Need for proper utilization of services of Panel Counsels/Central Government Counsels for conduct of cases on behalf of the Union of India:-**

1. It has been brought to the notice of the DOP&T that the services of Central Government Counsels appointed by this Department for conducting cases on behalf of the Union of India before various Benches of the Central Administrative Tribunal are not being utilized by some Ministries/Departments with the result that the Government Counsels are sometimes not aware of the cases listed before any bench of the Tribunal on a particular day. In such cases, briefs are given by certain Ministries/departments to the Central Government Counsels appointed by the Ministry of Law and Justice for concerned High Court.

2. The matter has been considered in the Department and it has been decided that the instructions issued by us vide our O.M. of even number, dated 25-2-1987 and 12-8-1988 are adhered to strictly. In other words, all cases coming before a Bench of the Tribunal are required to be entrusted to the Central Government Counsels appointed by this Department except at places such as Ahmedabad, Jodhpur, Jabalpur and Earnakulam where no Government Counsels have been appointed or adequate number of Government Counsels are yet to be appointed. In respect of the places mentioned above and at such places where Circuit sittings of the Tribunal are being held, services of Central Government Counsels appointed by the Ministry of Law and Justice for presenting cases before the High Court may be utilized to handle the cases on behalf of the Central Government in the Tribunal.

3. If, however, it is considered necessary, to appoint/engage Advocates, other than the empanelled Counsels circulated by this Department, approval of the Minister-in-Charge of the Administrative Ministry may be obtained before such appointment. It may be mentioned in this connection that rates of fee for engagement/appointment of Counsels in such cases will be the same as are prescribed and applicable to Central Government Standing/Additional Central Government Standing Counsel for presenting applications in a High Court.

(Dept. of Per. & Trg., O.M. No.A11019/38/85-AT, dated the 10th April, 1989.)

As the various Ministries/Departments are aware, Central Government Standing Counsels have been appointed by the Department of Personnel and Training at various places for defending cases before the Central Administrative Tribunal. A list of such Counsels appointed have been circulated to all Ministries/ Departments with a view to ensure that their services are made use of for defending cases in the Central Administrative Tribunal on behalf of the Government of India. It is only in exceptional cases where it is felt necessary to appoint Counsels outside the panel, private Counsels be engaged to take care of cases, that too with the approval of the Minister concerned. Instances have, however, come to the notice of this department that private Counsels are appointed by various Ministries/Departments in a routine way. It is once again reiterated that as far as possible services of Counsels whose lists have been circulated by this Department may be utilized and wherever it is found unavoidable, private Counsels be appointed after following the procedure prescribed in this Department's O.M. of even number, dated 13.7.1988 and 10.4.1989.

(Dept. & Trg. O.M. No. A-11019/38/89-AT, dated 29/08/89)

17.9. **Appointment of Counsel outside CGSC panel only with the approval of the Minister of the Administrative Ministry**

The names of the Central Govt. Counsel appointed to different Benches of the Central Administrative Tribunal is enclosed (not printed). In respect of Benches for whom no specific names have been mentioned, the Standing Counsels for the Central Govt. attached to the High Court are authorised to present cases of the Central Administrative Tribunal. More Counsels are being appointed to all Benches, which will be intimated separately.

The Central Government Departments are free to choose any Counsel included in the panel to present their cases or request the Standing Counsel to allot a Counsel to deal with their cases. If the number of cases filed before any Bench of the Tribunal in respect of a Ministry/Department is considerable and it is felt that it would be better to engage a Counsel exclusively to represent the Department, there is no objection for the Ministry/Department to appoint a Counsel who is not included in the panel. The selection of Counsel in such cases should be with the approval of the Minister of the Administrative Ministry. Such Counsel may be appointed without mentioning any period of tenure and they may be informed that their engagement can be cancelled at any time. The terms and conditions for payment of fees to such Counsel will be the same as are applicable to the Central Government Counsel/Panel Counsel in respect of cases coming before the High Courts.

[Dept. of Per. & Trg., Lr.No.A-11019/38/85-AT, dated 25/02/87]

17.10. **Ministry of Law and Deptt of Pers & Trg to be consulted before implementing Court orders**

It has come to the notice of this department that in cases where the Courts have passed orders against the Government of India instructions, the administrative Ministry/Department has not consulted the Law Ministry on the question of filing appeal against such orders, before implementation of such orders.

2. The matter has been considered in this Department and it has been decided that whenever there is any Court order against the Government of India Instructions on service matters, the Administrative Ministry/ Department/Office shall consult the Department of Legal Affairs and the Department of Personnel and Training on the question of filing appeal against such an order, as far as possible, well in time, that is before

the time limit, if any, prescribed in such order or before the time limit for filing appeal. No such orders shall be implemented by the concerned Departments/Ministries without first referring the matter to the Department of Legal Affairs for advice and to Department of Personnel and Training.

3. The Ministries/Departments are requested to note the above instructions for strict compliance.

[Dept, of Per. & Trg., OM No.28027/9/99-Estt.(A) Dated 1/05/2000]

17.11. **Judgement bearing on pay and allowances to be implemented only in consultation with Nodal Ministry**

It has been pointed out by Ministry of Finance that Court judgements which have a bearing on pay and allowances should be implemented only in consultation with Department of Personnel and Training. It is learnt that certain Circles (on their own) are implementing the CAT judgements having a bearing on pay and allowances without referring to Telecom Headquarters who in turn will have to consult Department of Personnel and Training before clearance for implementation.

Ministry of Finance has expressed displeasure at our deciding issues of pay and allowances which will have a wider impact without consulting them time and again, instructions have been issued by this Department, that issues with a bearing on pay and allowances are to be decided in consultation with nodal Ministry, but these instructions are not being adhered to properly in some cases.

It is therefore requested that every such case is invariably referred to Directorate for consulting it with the nodal Ministry. Circles are not to implement such CAT/Court decisions on their own.

[G.I., Dept, of Telecom. Letter No.50-60/94-PAT dated 13/12/94]

17.12. **Communications to Government servants or their Associations /Unions and submissions before Courts/Central Administrative Tribunal.**

I As per the Allocations of Business Rules, each Ministry/Department is responsible to discharge the functions allocated to it as well as to handle the administrative problems relating to service conditions of the employees under its administrative control. Similarly, U.T. Administration is responsible for all matters concerning staff under their control. The Decision-making process, however, involves consultation with/concurrence of other Ministries/Departments. In such cases, the views/comments of the Ministry/Department which has been consulted in the matter may be advisory in nature while in other cases such views/comments may be mandatory. In case there is a difference of opinion between two Ministries/Departments, these differences are sorted out by following such procedure as is laid down in this behalf. In all such cases whatever be the final decision, it is the decision of the Government and not the decision of any individual, Ministry/Department.

II It has been observed that while handling service matters/cases of the Government servants, the administrative Ministries/Departments in their communications to the Government servants/Association etc. or even in the affidavits filed/submissions made before the Supreme Court/Tribunal etc. make specific references to a Ministry/Department under whose advice/directives a particular decision has been taken. This gives an impression that the decision is that of the Ministry/Department which has been consulted and not that of the Government. Such allusion places the Government in an embarrassing position particularly when legal aspects are involved. It is, therefore, stressed that while communicating decision(s) on the representation(s)/complaint(s) etc. submitted by the

Government servants or their Associations, etc. the final decision should be in the name of the appropriate authority and in no circumstances, the communication should convey or give an impression that the decision was based on the advice of a particular Ministry/Department which accepted/ rejected the demand(s). Exceptions may be made in respect of the sanctions etc. where according to financial regulations, under rules/or other mandatory provisions, it may be obligatory to mention the name of the specific authority with whose concurrence, or in consultation with whom the sanction has been issued.

III Similarly, in case of affidavits filed or oral submissions made before Courts/Central Administrative Tribunal in matters pertaining to writ petitions/applications filled by the Government servants or their Associations etc., the submissions should be made on behalf of the Government. In no case, the name of any specific Ministry/Department, are mentioned in these submissions. Even in cases where the matter is pending before a Ministry/Department, the submission made should be that the matter is under consideration of the Government and not that of any particular administrative Ministry/ Department.

IV In service matters/cases filed by Government servants Associations, Government of India is one of the Respondents, all such cases have to be defended by the Administrative Ministry/Department/ Organisation where the Government servant is serving or served last. In case other Ministries Departments have been made respondents they are to be treated as pro-forma Respondents and the matter has to be defended by the administrative Ministry on behalf of the Government of India i.e., on its behalf as well as on behalf of other Ministries/Departments. In brief, there has to be only one counter-affidavit on behalf of the Government and it has to be prepared and filed by the Ministry/ Department etc. where the petitioner/applicant is serving. However, where more than one Ministry/ Departments has been made parties, those Ministries/Departments should be consulted or the draft counter reply should be shown to them.

V Further, it is observed that Court/CAT cases are not handled expeditiously and within the time schedule. Some times, references are made to the nodal Ministries/Departments dealing with policy matters or to the Ministry of Law at the last moment viz. a few days before the Ministry date fixed by the Court Tribunal. This does not give sufficient time to these Ministries/Departments to carefully examine the issues involved. It is, therefore, stressed that on receipt of the Notice along with the original Application/Petition the administrative Department/Authority should immediately prepare parawise comments counter affidavit. Wherever necessary the specific points may be brought out clearly on which comments of other nodal Ministries like Finance or Department of Personnel & Training etc, are required. There upon reference should be made to the concerned Ministry/ Department on priority basis. Thereafter, the matter may be referred to the Ministry of Law/Standing Government Counsel engaged in the matter for necessary vetting and filing the matter before the Tribunal/Court. The Ministry should also make arrangements for appearance before the Court/ Tribunal as and when the matter comes for hearing and for this purpose proper liaison with the Government counsel should always be maintained.

VI In cases where the matter is decided against the Government, immediate steps should be taken to analyse the judgement and a view taken in consultation with the nodal Ministry concerned as to whether the judgement should be implemented or a SLP needs be filed in the matter. The reference to nodal Ministry for their advice should be made well before the last date for filing Review Application before the CAT itself or SLP need be filed should be clearly brought out and the matter referred to

Ministry of Law for their advice. It is the primary duty of the administrative Ministry concerned to follow the matter at every stage and ensure filing of the counter-affidavit or SLP within the time schedule laid down by the Tribunal/Court. In case delay in filing the reply is apprehended, necessary steps to seek extension in time or stay orders may be taken with the assistances of Standing Counsels.

VII In certain cases, the Tribunal/CAT may not deliver substantive judgement in the matter and may direct the Government to take a final view in the matter based on certain guidelines etc. The Tribunal/Court may desire final decision by a specific date. In all such cases, it is essential to ensure compliance of the orders within the specified time. In case any delay is expected in reaching a final decision in the matter, extension of time from tribunal/Court should always be sought for. In such cases also, it has to be ensured that the matter is referred to different consulting agencies/Departments well before the last date of taking a final decision.

VIII In brief, the administrative Ministry has to ensure that in all cases timely action is taken and in no case the litigation is allowed to prolong to the extent that it results in contempt proceedings.

IX All the Ministries and U.T. administrations are requested to ensure that these instructions are strictly followed by all concerned under their administrative control.

[GOI Min of Finance, Deptt of Expdr OM F.No.7 (32)-E-III/92 dated 24/05/93]

17.13 Officers Authorised To Sign And Verify Pleadings

Deptt of Pers & Trg. Notification No. A-11019/105/87-AT dated 28/09/1993

GSR 630(E)

In exercise of the powers conferred by Article 77 of the Constitution and in supersession of the Government of India (Authorization of Officers for Verification of Pleadings and Other Documents to be filed in the Central Administrative Tribunal) rules, 1992, except as respects things done or omitted to be done before such supersession, the President hereby makes the following rules namely:—

1. **Short title and commencement –**

(1) These rules may be called the Government of India (Authorization of officers for Verification of Pleadings and Other Documents to be filed in the Central Administrative Tribunal) Rules, 1993.

(2) They shall come into force on the date of their publication in the Official Gazette (published on 28-9-1993)

2. **Authorization of officers—**

(1) The officers specified in the Schedule annexed to these rules are hereby authorized to sign all pleadings and other documents to be filed for and on behalf of the Union of India, before Central Administrative Tribunal established under sub-section (1) of Section 4 of the Administrative Tribunals Act, 1985 (13 of 1985).

(2) Such of the officers referred to in sub-rule (1) as are acquainted with the facts of the case are also authorized to verify such pleadings.

SCHEDULE

[See Rule 2(1)]

1. (i) Any Group 'A' Officer in any Ministry/Department of the Government of India;

   (ii) Any Desk Officer in any Ministry/Department of the Government of India;

2. Any Group 'A' Officer in any non-Secretariat office of the Government of India.

17.14 Instructions issued by CGDA's Office on Monitoring / Handling of Court Cases

Following important letters issued by CGDA's Office for monitoring Court Cases are reproduced as Annexures to this Chapter:

1. Nomination of Nodal Offices for monitoring the CAT/Court Cases

   [No. AN/III/3024/CAT dated 04/08/94 AND 05/12/97] Annexure I and II

2. Payment of bills in r/o Standing Counsels

   [No. AN/III/3012/VOL-VIII/CAT DATED 05/12/97 AND 03/03/99 and 16/5/2000] Annexure II, III & IV

3. Monitoring of Court Cases (DAD personnel)

   [No. LC/3024/1/DAD/COURT dated 25/11/02 and 10/03/03] Annexure V and VI

4. Re-imbursement of Conveyance expenses to staff of Legal Cell detailed to attend Court hearings for liaison with Govt Counsels.

   [No. Legal Cell/3024/Nodal/Conv dated 07/05/03] Annexture VII

5. Authorisation of provisional payment in respect of charged expenditure .. court judgements/ decrees

   [No. A/III/11909/Charged Expenditure dated 14-11-2000] Annexure VIII

Annxure I

No.AN/III/3024/CAT
Office of the CGDA,
West Block V, R. K.
Puram, New Delhi – 110066
Dated: 4.8.1994

To

The Chief C of A(Fys) Calcutta
The Chief CDA(P) Allahabad
All CsDA/CsF&A(Fys)
The JCDA(F) Meerut

Subject: Nomination of Nodal Offices for monitoring the CAT/Court Cases

Ministry of Defence (Finance) has desired to institute a foolproof system for monitoring Court/ CAT cases against DAD. In pursuance of the directions of the Ministry, it has been decided to nominate nodal office(s) for monitoring the progress of Court/CAT cases in which the DAD, irrespective of the organisation, has been impleaded as Respondent. Accordingly, the names of the officers indicated against each bench in the Annexure to the Circular hereafter will function as Nodal Offices for the purpose of monitoring Court/CAT cases pertaining to DAD filed/pending before that Bench. For this purpose, the concerned Controller would be required to nominate the Officer not below the rank of JCDA (DCDA where JCDA is not available) as Nodal Officer and also to form a cell exclusively for handling and monitoring Court/CAT cases. The name of the Nodal Officer so nominated including his residential address with telephone Nos. should be intimated to all CsDA and all Nodal Officers specified in Annexure under advise to HQrs. office. Besides, Controllers would be required to send the postal address of their office to the Registrars of each Bench.. In addition, Liaison Officer would be required to be nominated for regular interaction/liaison with Govt. counsel as well as Registrar of the concerned Bench. Such Officer may be provided telephone at his address as well as in the office, if possible.

The Charter of duties of Liaison officer will be as follows:

(i) To ascertain from concerned Govt. counsel the details of the cases against DAD (irrespective of organisation) listed for hearing on the following dates and attend the Court/CAT with the Govt. counsel on the dates fixed for such hearing.

(ii) To inform the Nodal JCDA/DCDA in the main office of the respondent Controller, outcome of the hearing by telex / telegram or on telephone.

(iii) To maintain a Register of court/CAT cases, Controller-wise/Organisation-wise and submit the Register to Nodal JCDA in the case of Liaison Officers serving in main office and to the head of the office in case the Liaison officer is serving in sub office. In case he himself happens to be the head of the office, the Register will be submitted to Inspecting Officer.

(iv) To procure the CTC of the judgement, as soon as the judgement is pronounced and obtain the opinion of the Govt. counsel to defend the case in writing in regard to the feasibility or otherwise of filing CWP/SLP or Review Petition and forward the same to the Nodal JCDA of the Respondent Controller and watch acknowledgment.

(v) Where Govt. counsel desires discussions or production of documents, he would be required to obtain such requirement in writing from the Govt. counsel and forward the same to the Nodal JCDA of the respondent controller. It will also be his responsibility to pursue the case till the requirement of Govt. counsel is complied with.

(vi) If the notices to the Controllers have been handed over to the Govt. counsel, it will be his responsibility to collect the notices together with letter of Govt. counsel and dispatch the same to the responding Controller.

2. As far as Nodal JCDA are concerned, they would be required to monitor the progress of each case irrespective of organisation personally with a view to ensure timely action and will be personally responsible for any lapses in the matter of Court/CAT cases. On transfer, proper handing/taking over of the Register will be made and the officer taking over will be briefed properly by the outgoing officer.

3. The above instructions may be noted for strict compliance. Controller(s) may also issue suitable instructions to all sections in their main office(s)/sub offices. Failure to bring any Court/CAT case to the Notice of Nodal JCDA will render all levels viz. dealing hand/supervisor and the AO/SAO I/c liable for disciplinary action.

Please acknowledge receipt.

(S. K. KOHLI)
Dy.CGDA (AN)

ANNEXURE

SL.No.	Bench	NAME OF NODAL OFFICE / CsDA OFFICE
1	Principal Bench New Delhi	CDA(R&D) New Delhi
2	Ahmedabad	LAO (A) Ahmedabad
3	Allahabad	PCDA (P) Allahabad
4	Lucknow	PCDA (CC) Lucknow
5	Bangalore	CDA Bangalore
6	Chandigarh	PCDA (WC) Chandigarh
7	Chennai	CDA Chennai
8	Cuttack	LAO Bhubaneshwar
9	Earnakulam	AAO (Navy) Kochi
10	Guwahati	CDA Guwahati
11	Hyderabad	CDA Secunderabad
12	Jabalpur	C OF A (Fys) Jabalpur
13.	Jaipur	AAO Jaipur (under PCDA (SC) Pune)
14	Jodhpur	LAO (A) Jodhpur
15	Kolkata	PC of A (Fys) Kolkata
16	Mumbai	CDA (Navy) Mumbai
17	Patna	CDA Patna

Anneuxre II

No.AN/III/3024/1/CAT/Vol.II
Office of the CGDA, West Block V
R. K. Puram, New Delhi – 110066
Dated: 5.12.97

To

All CsDA/CsF&A (Fys)
The Chief CDA (P) Allahabad / Chief C of A(Fys) Calcutta
JCDA (Funds) Meerut

Subject: **Monitoring of CAT/Court Cases – Nodal offices**

Reference: In continuation of this HQrs. circular of even No. Dt.13.2.97

Under this HQrs. circular referred to above. CsDA were requested to ensure compliance of certain requirements in the matter of making available documents/papers to the Nodal offices in cases filed in CAT/Court where the Controllers are respondents.

2. It has, however, been reported by CDA (AF) New Delhi who is the Nodal office for defending the cases filed in CAT (PB) / Courts at New Delhi that the Respondent CsDA are not furnishing the requisite documents complete in all respects thereby giving rise to avoidable correspondence at all levels and consequential delay in defending/monitoring such cases. Accordingly, the CsDA are again requested to keep in view the following requirement to be strictly complied with by them.

(i) Six copies of the counter-affidavit along with Annexures thereto, if any, may be supplied to the Nodal Office.

(ii) All the six copies of the counter-affidavit will be signed at the appropriate place by a Gp. 'A' officer. In this connection his HQrs. office circular No.ASN/III/3012/1/Vol.VI/CAT dt.9.11.93 reproducing the DP&T notification No.A/11019/105/87-AT dt.28.9.93. Published in GSR No.630(E) of extraordinary Gazette in Pt.II section 3 sub section-I refers.

(iii) In the office of the Respondent CDA, first two copies of the counter affidavit will be initialed on all the pages.

(iv) The annexures, if any, are to be signed by any Gazetted offices duly affixed with his official seal.

(v) All the six sets will bear an index on them, which will also be signed by the officer signing the counter-affidavit.

Please acknowledge receipt.

(P.S.MEHTA)
A.C.G.D.A.

Annxure III

No AN/III/3012/Vol-VIII/CAT
O/o The CGDA,
West Block – V, R. K. Puram,
New Delhi – 66
Dated: - 3rd March 99

To

All CsDA

Subject: Payment of bills in r/o Standing Counsels.

As per the extant practice in vogue the court fee bills in respect of CGSC are being collected by the nominated Nodal officers and forwarded to the concerned CsDA for its pre-audit and payment. It is generally noticed that it entails delays for various reasons i.e. non-compliance of the laid down procedure for completion and submission of the Court fee bills; non-furnishing of the replies by the CGSC to the audit queries etc. This has a cascading effect on the functioning of the Nodal officers who have to frequently interact with CGSC for defending the Court Cases.

2. With a view to tide over the above situation one of the CDA has proposed that the Court fee bills be pre-audited and paid at the Nodal officer level under intimation to the concerned CsDA. This would not only expedite the pre-audit and payment of Court fee bills but also would be conducive to congenial relations between the Nodal Officers and the CGSC. However, the funds required for admittance of the Court fee bills will be placed at the respective CsDA who are functioning as a Nodal Officer.

3. It is requested that your considered views on the proposal at para 2 ibid may please be furnished on or before 15th Mar' 99 positively to take a final decision in the matter.

Sd/-xxxxxxxxxxxx
(S.SUBRAMANIAM)
ACGDA (AN)

Annexure IV

No AN/III/3012/1/Vol-VIII/CAT
O/o The CGDA,
West Block – V, R. K. Puram,
New Delhi – 11006666
Dated: - 16 May 2K

To

The CDA(R&D)
New Delhi

Subject: Payment of Bills in respect of Standing Counsels

Reference: Your letter No. LC /CAT/G. Singh/OA 1293/98 dated 28.1.2000 and LC/CAT/PBS/OA 2483/94 dated 1.2.2000

It may be informed that your proposal regarding authorising the respective Nodal Officers to process the bills and release the payment to the Government Standing Counsel on behalf of the respondent CsDA received under your DO letter No.AN/I/014/R&D/Nodal dated 15.1.99 has been examined in detail in consultation with other Controllers and it has been decided to maintain status quo in the matter.

Since revised rates of Counsels Fee as fixed by Ministry of Law vide their OM No.F26 (1)/99 Judl dated 24th Sep 1999 have already been circulated to all Controllers vide HQrs No.AN/III/3012/1/ Vol.VIII/CAT dated 09.02.2000. The outstanding bills of Government Standing Counsel, which could have been pending for want of enhanced rates; would now be cleared speedily by the Controllers.

(A N SAXENA)
Dy. CGDA (Admin)

Annexure V

CONFIDENTIAL/ MOST IMMEDIATE

No LC/3024/1/DAD/COURT
OFFICE OF THE CGDA
WEST BLOCK-V, R K PURAM
NEW DELHI-66
DATED 25/11/2002

To

Subject: - Monitoring of Court Cases (DAD personnel)

In order to effectively monitor ongoing DAD legal cases, prompt implementation of judgements, moving higher Courts in cases, which have been decided against the UOI, subsequent audit of the outcome of legal cases and drawing lessons from them for corrective action in our systems and procedures, a database in Excel has been created in the Admin. Section.

As the position of the Court cases change with every date of hearing, HQrs office is of the view that it is necessary to update regularly the data. Prompt and error-free updation is feasible if the information transmitted to HQrs office is standardised and minimised.

In view of the above PCsDA/CsDA are requested to ensure that letters addressed to this office invariably bear its reference and also that letters addressed to another Controllers office or to the Govt Counsel are not endorsed to HQrs office merely for information in a routine manner. It is further requested that correspondence to HQrs office is addressed only when it warrants action in this office.

To standardise the inflow of information, pertaining to Court cases, PCsDA/CsDA are requested to submit the information as follows: -

(i) Information relating to outcome of Court hearings may please be submitted as per the specimen enclosed.

(ii) A Specimen of Summary-Sheet to be prepared in every case is also enclosed, for incorporating the same in Monthly Report already being forwarded to HQrs office, as desired vide this office letter No AN/III/3113/Vol-I dated 14/7/2000 & 20/9/01 on floppy size 1.44 MB (3.5) in MS Word.

(iii) PCsDA/CsDA submitting Reports of Court cases and intimations of Court hearings in Hindi language are requested to forward its English version also.

(iv) PCsDA/CsDA offices having the facility of Internet may intimate the outcome of hearings to HQrs office through Internet on **cglegalcell@hub.nic.in.**

Please acknowledge receipt.

(A N DAS)
Dy.CGDA (Project)

Encl:- Specimen copies

SPECIMEN

FAX

"COURT CASE/TO BE HANDED OVER TO LEGAL CELL IMMEDIATELY".

No _____

O/o The _____

Dated: -

To

The CGDA
West Block-V
R K Puram
New Delhi-66

Subject: - Court Case No _____filed by Shri/Smt_____, Designation _____, in CAT/High Court at_____(name of station)

Reference: - HQrs office No_____

The Court case cited in the subject above was listed for hearing on _____ and the same has been adjourned to _____. (In case some orders are passed the context be amended accordingly.)

It is a DAD/Non-DAD case and the grievance of the individual relates to_____

Dy. CDA/SrAO

Copy to: -The _____ For information and necessary action please.

Dy. CDA/SrAO

SPECIMEN OF SUMMARY SHEET

1. NAME OF APPLICANT/PETITIONER: -
2. CASE No: -
3. COURT: -
4. FIRST DATE OF HEARING: -

GRIEVANCE OF THE APPLICANT/PETITIONER

SL.No	RELIEF SOUGHT	DEFENCE OF DEPARTMENT

Annexure VI

CONFIDENTIAL/ MOST IMMEDIATE

No LC/3024/1/DAD/COURT
OFFICE OF THE CGDA
WEST BLOCK-V, R K PURAM
NEW DELHI-66
DATED: - 10/03/03

To

_____

_____

Subject: - Monitoring of Court Cases (DAD personnel)

Please refer to the HQ office circular No even dated 25/11/03 wherein PCsDA/CsDA have been requested to forward information pertaining to Court cases as per guidelines given below:-

1. All the Letters addressed to HQ office, invariably bear the reference of HQ office.

2. Correspondence between the Controller offices or with the Govt Counsels is not endorsed to HQ office merely for information in a routine manner.

3. Outcome of Court hearings is intimated as per specimen circulated with the letter dated 25/11/02.

4. Summary Sheet of every case (Specimen circulated with Letter dated 25/11/02) is incorporated every month in the Monthly Report being forwarded to HQ office as desired vide this office letter No AN/ III/3113/Vol-I dated 14/7/2000 & 20/9/01 on floppy size 1.44 MB (3.5) in MS Word.

5. Reports of Court cases and intimations of Court hearings in Hindi language are forwarded with its English version.

6. PCsDA/CsDA offices having the facility of Internet intimate the outcome of hearings to HQ office on the E-Mail address i.e. cglegalcell@hub.nic.in.

Correspondences being received from the offices of PCsDA/CsDA reveal that the guidelines referred above are not being followed by many of them.

PCsDA/CsDA are requested once again to ensure that correspondence pertaining to Court cases is forwarded as per the requirements mentioned above and intimation regarding outcome of hearings is forwarded through FAX/E-Mail on the same day of hearing and if not feasible, then positively on the very next working day.

(A N DAS)
Dy.CGDA (Project)

Confidential
No. Legal Cell/3024/Nodal/Conv
O/o The CGDA, West Block – V, R. K. Puram, New Delhi – 66
Dated: - 07/05/03

To

The PC of A (Fys) Kolkata
All PCsDA/CsDA
All Nodal Officers

Subject: - Reimbursement of Conveyance expenses to staff of Legal Cell detailed to attend Court hearings and for liaison with Govt Counsels.

The Nodal Officers were requested vide this HQrs. Letter No. Legal Cell/3024/CAT/Review, dated 2/12/02, to give their views on the constraints being faced by staff dealing with the Legal work. One of the major constraints brought to the notice of the HQrs office pertains to the reimbursement of Conveyance expenses incurred by the staff on attending Courts and liaising with the Govt Counsels.

2. A detailed examination of the position has revealed that in the majority of the cases, the reimbursement of conveyance claims are restricted to Rs 150/- in accordance with General Notes (i) reproduced below Supplementary Rule 89 of FRSR Part II Travelling Allowances. In this connection attention is invited to GOI Decision No 6(C&AG's Cir No 164-Audit (Rules)/8-94, dated 5/5/94) reproduced below SR – 46, which states that 'Local journeys' (i.e. journeys beyond 8 Km within the limits of the Urban Agglomeration/Municipality or contiguous Municipality, etc., in which the Headquarters of the Govt servant is located) should normally be performed in the same way as the Govt servant performs the journey to his duty point, i.e. by bus, local trains or his own conveyance. **Where travel by special means of conveyance is considered necessary, prior permission of a superior authority should be obtained and in such cases,** if more than one Govt. servant are deputed for duty at the same point, they should, as far as possible, perform the journey together by sharing the hire charges of taxi or scooter or other conveyances if necessary by assembling at the normal duty point. The bus/rail fare or mileage allowance for 'local journeys' should be regulated with reference to the actual distance travelled or the distance between normal duty point and temporary duty point, whichever is less.

3. Since the work of Legal Cell involves large scale travelling almost every day for attending Courts and to liaise with the Govt Counsels for discussions on the upcoming cases, PCsDA/CsDA are requested to grant prior permission to the staff as stipulated in GOI Decision No 6 (C&AG's Cir No 164-Audit (Rules)/8-94, dated 5/5/94) reproduced below SR 46 so that they are paid the actual expenses incurred on travelling.

(A N DAS)
Dy.CGDA (Project)
Important Circular

Annexure VIII

No. A/III/11909/Charged Expenditure
Office of the CGDA
West Block-V, R. K . Puram
New Delhi-110066

Dated 14-11-2000

To,

All PCsDA/CsDA

Subject: Authorisation of provisional payment in respect of Charged expenditure-Court judgements/awards/Decrees etc.

Reference: In continuation of HQrs office important circular No. A/III/11909/Charged Expenditure dated 29-9-2000 addressed to all Pr. Controllers/Controllers by name.

Please refer to the above mentioned HQrs office Most Important circular regarding authorizing provisional payment in respect of charged expenditure.

2. Para 4 of HQrs office Most Important Circular dated 29-9-2000 quoted above emphasizes that it should be ensured that, in emergent cases and situations, Pr CsDA/CsDA may use their personal discretion to authorize provisional payments in the absence of allotment under charged expenditure in order to avoid contempt of court and also that a proper liaison/monitoring be established with authorities at command HQrs regarding release of funds under charged Expenditure.

3. In one of the cases mentioned in Para 1 of our letter under reference above, it has further come to the notice of HQrs office that the CAT case had been dealt with at lower levels without showing the case to the CDA and the case was put up to the CDA much later when the time prescribed for implementation of the court's order was over. This had led to all round embarrassment and unpleasantness as already stated. Controllers are aware that in the original application filed by Petitioner in the Central administrative Tribunals/Courts in the matter of pay and allowances etc. normally CsDA and or CGDA are made as one of the respondents. There may be occasions where CsDA/CGDA are not made as one of the respondents by the applicants, as had happened in the two cases referred to in para 1 of our Important Circular dated 29-9-2000 under reference. In both types of situations (i.e. where CsDA are made respondents or, they, neither the DAD, are not made the respondents), administrative authorities are responsible to defend the cases on behalf of the Union of India and all other respondents but while furnishing parawise reply/filing of counter affidavits, the advices of the CsDA are always required to be obtained by the administrative authorities. (However in the two cases referred to above, the advice of the CsDA was not obtained while filing counter affidavits by the respondents). Such consultations by the Executive with CsDA will/should ensure that a uniform approach is adopted while filing the counter affidavits and the chances of expressing in the counter affidavits divergent opinions of the Executive on the one hand and that the CDA on the other hand, to the detriment of CDA's organisation (as has happened in the case mentioned at para 1 above) are avoided. To discharge this pivotal role, it must be ensured that all connected documents regarding OA and

counter affidavits filed by the administrative authorities before CAT/Court are made available to the Pr. CsDA/CsDA and the latter should ensure this through suitable liaison with the Executive authorities. This is all the more essential when CsDA./DAD are not made the respondents in the cases and therefore their offices are not even made aware by the Executive authorities under the Ministry of Defence, of the details of the OA including copies of original petitions/counter affidavit filed by the respondents (Govt).

It should therefore logically follow that in all CAT/Court cases, the progress of the cases should be monitored by the Pr. Controllers/Controllers/their officers till the orders/judgements are delivered by the CAT/Courts and thereafter implemented irrespective of whether CsDA/DAD are made one of the respondents or not. Accordingly as and when the orders/judgements are passed by the CAT/Courts and the same are received in the Pr. CsDA/CsDA office either directly from the Courts/CAT or from the Executive authorities (especially when CsDA/DAD are not respondents), for implementation of the orders/ judgements, action should be taken by the Pr. CsDA/CsDA to intimate the administrative authorities regarding the absolute requirement of issue of Administrative sanctions of the CFA for implementing the Judgement and also for meeting the expenditure out of charged expenditure for which special allotment under 'Charged' Account is to be released. While dealing with this issue the Pr. CsDA/CsDA may carefully examine, at their personal level whether the aspect of charged expenditure is really involved or not while implementing the judgement. Further, the arrears claims etc. on this account received in the main office, to implement the orders/judgement should be dealt with in audit on top priority basis. If queries are required to be raised even in the first instance either on the aspect or implementation of the order/judgement/ details there of or on the aspect of allotment of funds under charged expenditurer or the calculations made for payment of arrears/refixation of pay etc. or different CsDA are involved in implementing the orders/ judgements the same be done with the approval of JCDA/CDA/Pr.CDA.

4. For the above purposes, suitable monitoring system should be instituted at the level of Pr. CDA/ CDA or Jt. CDA, to ensure that the cases are promptly dealt with even at the earliest stages in audit especially at the subordinate levels, in that office, before they are put up to JCDA/CDA/Pr. CDA. In this connection, please refer to HQrs office confidential letter No. AN/III/3024/1/CAT dated 2-3-94 regarding instructions on CAT/Court cases under which a copy of Cabinet Secretary's DO No. P.26012/2/94-AT dated 17.1.94 and JS (E) Ministry of Defence ID No. 1(1)/94-D(CMU) dated 7-2-94 have been forwarded. For effective monitoring and handling CAT/Court cases, a register has been prescribed as per proforma endorsed to the HQrs office AN Section letter dated 2-3-94 ibid. In order to monitor the implementation of the Court judgements, the proforma of the above mentioned register may please be further amplified to include specific columns for the above purpose, especially from the date on which the CAT/Court judgements are received to the stages when they are finally implemented in the shape of release of payments by the offices of the Pr. CsDA/CsDA such cases should be put up to JCsDA/CsDA/Pr. CsDA with in a maximum time limit of 7 days from the dates of receipt of references/copies of judgements in their offices to enable the JCDA/CDA/Pr. CDA to give appropriate directions and monitor strictly further progress till the time payments are released either on a provisional basis or based on actual receipt of sanctions of CFAs for the implementation of the judgement and allotment of funds under charged expenditure.

It is requested that suitable instructions may please be issued to the effect that these cases are invariably submitted at various state to the Pr. CsDA/CsDA and in their absence Jt. CsDA for information and their specific directions.

5. The direction given above are equally applicable in all cases pertaining to pay matters store contract/ MES works services/M section matters/Pension/Fund matters etc. In the above context, it is also imperative that the heads of the organisations on the Executive side should also be kept informed by the CsDA well in advance of the procedural requirements in implementation of CAT/Court Judgements and the audit requirement of sanction or implementation of the judgements and allotment of funds under charged expenditure etc. It is also requested that in these cases, personal liaison, be constantly maintained at the minimum level of G.Os. with the executives, at appropriate level to expedite the matter. The G.Os. should bring such cases to the notice of their JCDA/CDA/Pr. CDA whenever delays are taking place despite such liaison or there are differences of opinion on the modus operandi for implementation of the Court's orders/Judgements etc. This is also required for mutual understanding of the views of CsDA and the executive authorities for implementation of the CAT/Court orders. In case of any serious difference of views/opinion, in implementing the CAT/Court judgement, including the incidence of expenditure whether the same should be met out of charged expenditure or otherwise etc. the executive authorities should be suitably and at appropriate levels advised demi-officially by the CDA/Pr. CDA at his or her level, to obtain orders/clarifications from the service HQrs/MOD through their staff channels and a comprehensive reference is also made to HQrs office on such doubtful cases, sufficiently before the expiry of the dates of implementation of the CAT/ Court orders. Further the Executive Authorities should also be requested at appropriate levels to consult the CDA/Pr. CDA while filing affidavits before the CAT/Court for seeking extension of time also to implement their orders of judgments etc. in case the standing Central Govt. Counsels/legal authorities advice otherwise, the option of provisional payment be exercised and the requirement of ex-post facto sanction in the same financial year in which payments are made may be pressed for in such situations. The bottom line is that any embarrassment to the CDA/Pr. CDA/CGDA or the DAD itself, through strictures passed by the Courts/CAT for non payments by the CsDA in compliance with the courts directions, is to be avoided at all costs. It may however be noted that onus of getting the sanctions of CFA for implementing the Court's orders and for obtaining the allotment of funds under charged expenditure (where required) remains on the executive Authorities. It should however be borne in mind always, that the orders of the Courts/CAT having financial implication should be implemented expeditiously or with least possible delays as Courts do not normally entertain any excuses for non implementation of their orders on account of delays that too abnormal in the compliance with procedures obtaining in the domain of executive or the CDA which are purely internal matters to the respective Departments.

6. Please ensure that the contents of this circular are brought to the notice of all concerned for strict compliance. In case of non-observance of various instructions issued above, it should be viewed seriously and suitable action including disciplinary action be taken against the defaulting functionaries in the DAD.

Please acknowledge receipt.

M. Kumaraswami
Addl. CGDA (Audit)

CHAPTER - XVIII

DRILL ON HANDLING/MONITORING OF COURT CASES

18.1 TYPES OF APPLICATIONS

1. An aggrieved person moves the Tribunal with a prayer for relief. The application wherein he submits his grievance, and prays for relief is known as Original Application (OA). In the course of disposal of the Original Application, written submissions of several other types are also filed before the Tribunal, which are incidental to the process of adjudication of grievances. The details of the various applications/ petitions, which are filed before the Tribunals are explained in the succeeding paragraphs.

2. **Original Application (OA)**: This marks the commencement of the litigation. This is filed by person(s) aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal". OAs are filed under Section 19 of the Administrative Tribunals Act, 1985. The OA should conform to the form prescribed in the Rules. The OAs are numbered serially throughout the year for example OA No. 1/1977, OA No. 2/1997, etc. OA is referred to through the serial number and the year of filing e.g. 2049/95, 1831/96 etc. The number and year together, are capable of uniquely identifying an application. All references to the OA are made through this number only and hence this is of utmost importance in dealing with the case.

3. **Transferred Application (TA):** As per Section 29 of the Administrative Tribunals Act, 1985, every suit or other proceedings pending in any court before the establishment of the Tribunal should stand transferred to the Central Administrative Tribunal (CAT) after the establishment of the Tribunal. We are aware that the Central Government has the powers to bring in more organisations (Public Sector Undertakings, Autonomous bodies etc.) within the jurisdiction of the CAT. As and when any such new organisation is brought within the jurisdiction of CAT, any suit or proceeding relating to such organisation (on service matter only) should be transferred to the CAT. Such applications which are transferred from other courts to CAT are numbered as Transferred Application No.../... e.g. TA No 22/2003, TA No 345/2001

4. **Review Application (RA)**: Parties before the Tribunal may file applications for Review of the orders of the Tribunal. Such applications which pray for review of any Order of the Tribunal are known as Review Application (RA) and are referred to as RA No._____ of____ in OA No._____/19..... e.g. RA No 16 of 2003 in OA No 345/2003.

5. **Contempt Petition**: Parties may file contempt petition against each other. Generally, such petitions are filed by the applicant in OA alleging that the Orders of the Tribunal in the OA have not been complied with by the respondent and thus, the respondent is guilty of Contempt of Court. There are two kinds of Contempt of Court viz. Civil and Criminal. The petitions are numbered as CCP (Civil/Criminal) and are generally referred to as CP No._____ of 19__ in OA No.___ of 19___. Contempt Petitions are filed by name against the official who is alleged to have committed contempt of court. In case contempt is established, the official concerned may be sentenced to pay fine or undergo imprisonment. At times the CAT may direct personal appearance of the official alleged to have committed contempt.

6. **Petition for Transfer**: As per Section 25 of the Administrative Tribunals Act, 1985 any of the parties to an application may request the Chairman for transfer of a case from one bench to another. Such

requests for transfer of case are numbered as PT No.____/19___.

7. **Miscellaneous Application (MA)**: In addition to the applications/petitions, which are for specific purposes, there may be occasions for the parties before the Tribunal to make written submissions for other purposes such as the following: -

a) Vacating interim orders

b) Making Amendments to the Pleading.

c) An applicant may like to add more respondents to the case

d) A party may like to apprise the Tribunal of further developments, which have a bearing on the case.

e) Seeking extra time for implementing order.

8. The above list is purely illustrative and not exhaustive. Whenever a need arises for additional written submission to the Tribunal the same is met through Miscellaneous Applications. They are numbered as MA No. of 19___ and are referred to as MA No ____ of_____ in OA No. _____ of_____.

9. While discussing the case with the Counsel or while inquiring about the case from the court officials, one must quote the complete OA number i.e. number of the year and also the detail of the application i.e. CCP No. ___ or MA No. ____ etc.

18.2 Action On Receipt Of Notice

1. Notices may be received from the Tribunal either by post or through the officials of the Tribunals. At times even the party to a OA may also bring the notices. The notices brought by the party are known as DASTI and the same are of urgent nature.

2. As per the instructions contained in Government of India Deptt. of Personnel and Training OM No. A 11029/21/88-AT dated August 1988, the officer receiving the notice should indicate his name and designation alongwith the office stamp, date and time of receipt on the acknowledgement slip. These instructions must be scrupulously complied with.

3. Normally Notices are received by the Govt. Departments under the following circumstances: -

(a) Notice to show cause against admission.

(b) Notice after admission-for the purpose of contesting the case.

(c) Notice meant for the employees working under the responder department.

4. The provisions relating to the service of notice are contained in Rule 11 of the CAT Procedure Rules 1987 and Chapter V of the CAT Rules of Practice 1993.

5. In the types of cases mentioned under Para (c) above, the Head of the Department receiving the notice is required to get the notices served on the private respondents urgently and obtain their acknowledgement. Thereafter an affidavit may be filed in the Registry confirming compliance and enclosing

the copies of the acknowledgement.

6. As regards the notices mentioned at Paras (a) and (b) above these are meant for the respondent department and call for elaborate action on the part of the recipient. The first issue that arises for determination by the recipient is the extent to which he is involved in the case. At times an applicant may sue more than one department in the same OA e.g. an applicant who moves the Tribunal regarding allotment of his Govt. accommodation in favour of his son or daughter may include in the array of parties, Ministry of Urban Affairs, Dte of Estates, the Department in which he was serving and the Department wherein the son/ daughter is working. Another example is of an employee serving in the Ministry of Industry who may challenge the validity of the provisions in the guidelines issued by the DOP&T for conducting the DPC because the DPC held in his department has not selected him for promotion. Thus there may be two types of circumstances wherein more than one department is impleaded by an applicant.

(a) Where he has challenged the action of one department based on the guidelines issued by another Department.

(b) Where the facts of the case relate to more than one Department.

7. In all such cases a common defence will be put up on behalf of the Government of India. There should not be any contradictory statements or stands by various departments. As per Govt. of India, Deptt of Pers. & Trg OM No. 20036/23/68-Estt dated 6 June 89 the primary responsibility for contesting the cases will be with the Administrative Ministry/Department concerned on the basis of the specific facts pertaining to them.

8. As regards the case wherein the applicant has impleaded more than one department, which have played various roles in the transaction, which has resulted in the grievance of the applicant, it would be appropriate that the defence of the case is handled by the Deptt whose order is being challenged. Under such circumstances, the defending department will pursue the case in consultation with other co-respondents. The recipient of the notice will decide the extent and the level of his involvement in the case and accordingly decide as to who will handle the case before the Tribunal. In case primary respondent is of the view that the case is required to be handled by it then it has to get in touch with other Govt. respondents and appraise them suitably. The comments of other departments will be obtained on the specific paragraphs pertaining to them and incorporated in the reply. Draft reply, when prepared will also be shown to other respondent departments. The progress of the case will be intimated to all the respondent departments from time to time. Alternatively, if it is felt that involvement of our department is limited and the case is required to be handled by some other respondent, then letter has to be written to the primary respondent accordingly, preferably alongwith the reply on the paragraphs pertaining to the department. The primary respondent will keep informed the other respondents of the progress of the case from time to time. During the course of the case also there may be occasion when a respondent other than the one who is pursuing the case before the Tribunal may be required to produce records. Such requirements will have to be complied with through the co-ordinated action of all the respondents in the case.

9. The above mentioned procedure applies only in respect of the official respondents which includes respondents who are impleaded by name for action taken by them in discharge of official capacity. It is also likely that the respondent, who is aggrieved by the seniority position assigned to him, may sue his colleagues who have been, according to him, wrongly placed above him in the seniority list. Such persons are known as private respondents. Defending department is not required to take any action on behalf of

such respondents.

10. After writing to the co-respondents, the primary respondent will initiate action for engagement of Government Counsel. In respect of the Principal Bench, engagement of Counsel is done by the Dy Legal Advisor whose office is located in the premises of the High Court. The defending department will have to pursue the case with the Dy Legal Advisor for engagement of counsel.

11. In case the date of hearing mentioned in the notice is so short that the counsel could not be appointed by them, an officer of suitable level, well conversant with the facts of the case should appear before the Tribunal on the appointed day. When the case is called, the officer will have to present himself, reveal his identity, establish the same by production of identity- card and pray for extension of time for filing reply, stating that action for engagement of counsel is being taken and that the respondents will be contesting the case through the counsel. In case the applicant has prayed for any interim relief, the hearing may not be as simple as above. Under such circumstances, the official appearing for the respondent will have to be fully prepared to argue against the grant of interim relief. Alternatively, efforts for engagement of the counsel should have been stepped up so as to ensure that the counsel is available well in time before the date of hearing. Nevertheless, on receipt of a notice, there is no harm in looking into the case once again keeping in mind the facts brought by the applicant. If the relief sought is found to be due and admissible to the applicant, at this stage also case can be reviewed and the decision brought to the notice of the Tribunal.

12. Section 23(2) of the Administrative Tribunals Act, 1985 provides that the defending department may authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised by it may present the case with respect to any application before a Tribunal. Rule 62(b) of the CAT Rules of Practice provides that a presenting officer other than a legal practitioner representing any of the parties ..... shall also file a memo of appearance in Form II. As per DOP&T instructions on the subject, a Group A Officer may be nominated as Presenting Officer with the approval of the Minister concerned. The appointment of such presenting officer is required to be communicated to the Registry. The presenting officer so appointed can file reply on behalf of the department and argue the case before the Tribunal. While filing the reply, the Presenting Officer is required to file a memo of appearance as specified in the rules.

13. In case it is decided that the case will be defended through the departmental presenting officer, he must be contacted with full facts of the case and his guidance be obtained for preparation of reply. As regards the engagement of Govt. Counsels, the office of Dy. Legal Advisor, Ministry of Law endorses a copy of the order engaging the counsel, to the respondent also. The counsel concerned must be contacted immediately on receipt of information about his/her appointment and the case be pursued as per his advice. Without waiting for the appointment of counsel, action for drafting reply should be pursued so that the respondent may have the draft reply ready even before their first meeting with the counsel. It will be a good practice to keep meeting the counsel regularly, well in time before each hearing.

18.3 **Preliminary Objection**

1.1 Legal proceedings may be contested in two distinct ways-viz., on merit and on maintainability. The objection to an Original Application (OA) on the merits of the case rests on the facts and circumstances of the case and the law relating to the same. On the other hand, there are some general aspects relating to the maintainability of the OA without going into the merits of the averments made therein. In fact, it means

that irrespective of the merits of the applicant's case the applicant is not entitled to approach the court and get any relief. Accordingly, it should be the endeavor of the respondent to contest the proceedings on both the grounds. The objection relating to the maintainability of the application is also known as Preliminary Objection. Such objections are to be disposed off before the court takes up hearing on the merits of the case. Some of the Preliminary objections which are available to the respondent are explained in the succeeding paragraphs.

2.1 **Jurisdiction**: - The Court moved by the litigant must have jurisdiction to adjudicate on the matter raised by the applicant, In case, the applicant moves any Court other than the Tribunal for redressal of his grievance relating to service matters, the proceedings can be resisted on the ground of lack of jurisdiction. In this connection Section 28 of the Administrative Tribunals Act, 1985 is relevant and the same is reproduced below: -

Exclusion of jurisdiction of courts except the Supreme Court

On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service, or post, no court except: -

(a) the Supreme Court, or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947), or any other corresponding law for the time being in force,

shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

2.2 The above statutory provision has to be viewed in the light of the recent judgement of the Hon'ble Supreme Court in L. Chandra Kumar Vs Union of India and Others, 1997(3) SCC 261. Extract of the judgement is reproduced as under:-

" In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323A and clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Article 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by

overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated".

2.3 **Jurisdiction with reference to Bench**
{Rule 6 of CAT Procedure Rules, 1987}

Place of filing application: - (1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction-

(i) the applicant is posted for the time being, or

(ii) the cause of action, wholly or in part, has arisen:

Provide that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule(1) a person who has ceased to be in service by reason of retirement, dismissal or termination of service may at his option, file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.

3.1 **Limitation**: Section 21 of the Administrative Tribunals Act, 1985, prescribes the period of limitation for moving the Tribunal. The above Section is reproduced below for ready reference:-

(1) A Tribunal shall not admit an application,

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made.

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (I), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates: and

(b) no proceedings for the redressal of such grievance had commenced before the said date before any High Court.

The application shall be entertained by the Tribunal if it is made within the period referred to in clause (a) or, as the case may be, clause (b), of sub-section (I) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

3.2 In case an application has been filed beyond the period of limitation, the respondent can challenge the maintainability of the same on this ground alone. However, it must be remembered that the applicant who files an application beyond the period of limitation, generally files a Miscellaneous Application (MA) for condonation of delay. If the applicant has admitted that the application is being filed beyond the period of limitation and has moved a MA for condonation of delay, the respondent should also file a separate reply to the MA. The applicant would have endeavored in the MA for condonation of delay that he had "sufficient cause" for not filing the OA within the period of limitations. Accordingly, the respondents stand in the reply to this MA should be that the applicant has not shown "sufficient cause" for the delay.

3.3 With regard to limitation, the following points are relevant: -

(a) Repeated unsuccessful representations do not extend the period of limitation. Assume that an employee's request for stepping up of pay has been rejected in Oct 88 by competent authority. Also assume that he makes repeated representations in Jan 89, Jul 89, Feb 1990 and June 1990 on the same issue and the last of such representations was rejected in Aug 90. The employee cannot move the Tribunal in Sept 1990 or Oct 1990 contending that his case was rejected only in August 1990.

(b) Where an appeal has been prescribed through statutory provisions, the employee is required to exhaust this remedy before moving the court. S.S. Rathore Vs State of M.P. (1989) ATC 913 (SC) is an important case in this regard.

(c) It has been held in a number of cases that an application in which cause of action accrued prior to 01/11/82 (CAT was established w.e.f. 01/11/85) is time barred and that this infirmity is incurable.

3.4 There are a number of issues relating to limitation such as continuing cause of action, limitation against void order etc. It is essential to bear in mind that limitation is a strong preliminary objection in the hands of the respondent and any fact having a bearing on limitation should, therefore, promptly be brought to the notice of the counsel so that he can draw the best advantage out of it.

4.1 Mis-joinder & non-joinder of parties: An applicant is required to include, in the array of respondents, all those who are likely to be affected if the relief prayed for by him is granted. This is over and above those parties from whom the relief is claimed. If an applicant has failed in this respect, the respondent may raise the objection of mis-joinder/non-joinder of necessary parties e.g. when an employee contends that he has been wrongly denied promotion and in his place certain ineligible persons have been promoted. If he has not impleaded such persons, who, according to him have been wrongly promoted, the respondent may oppose the OA on the ground of non-joinder of necessary parties.

4.2 However, it is relevant to know that generally, the OA is not dismissed on this ground. Normally, the CAT directs the applicant to include the necessary parties in the array of respondent. Nevertheless, it

is appropriate for the respondents to bring to the notice of the court, the fact regarding non-joinder of parties, so as to avoid any future complications.

5.1 **Res-judicata**:- The term Res-judicata literally mean "a thing which has been decided". It is based on the Roman Maxim that it concerns the state that there should be an end to litigation". The principle is also based on the maxim that "no man should be vexed twice over the same cause". According to the doctrine of Res-judicata if a matter has been directly and substantially in issue under the same set of parties and has been decided by a court of competent jurisdiction, then it will not be entertained by any other court in future. This doctrine is contained in Section 11 of the Code of Civil Procedure (CPC). While one does not expect the same applicant to move the Tribunal for the second time, after losing an earlier case, there are certain other aspects like constructive Res-judicata, which may be available for the respondents on several occasions. The explanations below Sec. 11 of CPC provide the circumstances under which the plea of constructive- res-judicata will lie.

e.g. If an employee moves the Tribunal initially for revision of seniority, and after winning this case, for holding of review DPC and after winning this case, on the third occasion for payment of arrears of salary, it may be possible to contend that he ought to have claimed all the relief in the first OA itself and failure on the part to do so results in the latter OA being hit by the doctrine of Constructive Res-judicata.

5.2 It is however, necessary to bear in mind that this is a legal concept and there are several delicate points which are liable to be raised by the contesting parties for and against the application of this principle. It is the duty of every official pursuing the case on behalf of the respondents to bring to the notice of the counsel, every fact that may help in setting up a successful plea of Res-judicata.

6.1 **Estoppel**:- Estoppel is also a legal concept which prohibits a party from raising a plea on certain circumstances. As per section 115 of Indian Evidence Act 1972, when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representatives, to deny the truth of that thing. As in the case of Res-judicata, the applicability of estoppel also depends upon a number of circumstances. However, a diligent litigant is under a duty to bring to the knowledge of his counsel any information which will help in raising this plea e.g., if an applicant has got employment by mis-representing his date of birth, he cannot at a later time question the act of the employer which is based on the fact presented by the employee.

7.1 **Non-exhausting of official remedies**: - Section 20 of the Administrative Tribunals Act, 1985 provides that the "Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievance" subsequent Sub Rules of the above section also clarify that a person shall be deemed to have availed of the remedies after expiry of six months from the date of making appeal, if any, preferred by him, even if no final order has been made. If any applicant has rushed to the court against his suspension, the same can be resisted, without going into the merits of the application on the ground that the applicant has not availed of the departmental remedy open to him by way of statutory appeal under CCA Rules.

8.1 **Suggestio falsi and suppressio veri**- Every person is expected to approach the court with clean hands. In case, the court is convinced that the applicant has suppressed material information from the court or has made some misleading statements, in his OA, the same will be a very good ground for seeking dismissal of the OA without going into the merits. In all such instances, every effort must be made to raise

the plea of suggestio falsi and suppressio veri with adequate evidence.

9.1 **Plural remedies**: - As per Rule 10 of the CAT procedure Rules, 1987, an application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another. Thus, it will be lawful for an applicant to seek quashing of an existing seniority list, revision of his seniority, holding of review DPCs for promotion as per revised seniority and arrears of pay and allowances. All these reliefs can be claimed in the same OA because they are consequential to one another. If on the other hand an applicant requests for revision of date of birth and counting of past service rendered in some other department in one OA, the same can be challenged for being violative of Rule 10 of the CAT procedure Rules, 1987.

9.2 Normally, an OA is not likely to be dismissed on the ground that it contains plural remedies. It is also open to the court to admit the OA in respect of only those remedies. Notwithstanding this position, it is the duty of the officials pursuing the case to bring to the notice of the CAT that the applicant has prayed for unconnected plural remedies and the OA is liable to be dismissed on this ground.

10. Preliminary objection is a powerful weapon at the hands of the respondents. Successful plea of limitation, Res-judicata etc. will enable the respondents to get the OA dismissed without going into the merits of it. Besides, winning a case on preliminary objection will save considerable time and effort as well. Hence a conscious attempt must be made to look for possible preliminary objection and raise the same.

11. At times, if prayed for, the court may permit the filing of a short reply opposing maintainability of the OA. Under such circumstances, the short reply should be filed in time reserving the right to file detailed parawise reply, if needed, after the question of maintainability is decided. Respondents will be required to file detailed parawise reply only if the question of maintainability is decided in favour of the applicant. Alternatively, preliminary objection can be listed in the counter reply as well. This should be brought to the notice of the court at the time of admission itself. The court may hear the preliminary objection at the time deciding the admission of the OA or at the time of final disposal.

18.4 Preparation And Filing Of Reply

1. Respondents are required to file reply to Original Application (OA) as well as the Miscellaneous Application (MA) filed by the applicant so that the averments made by the applicant are clarified and the correct position is placed before the court. Reply of the respondents is required to be drafted with utmost care because the same forms the basis of the respondent's defence. In case a point is not brought out in the reply, it may become difficult to effectively contest the case at a later stage and hence it is essential that the case of the respondents is brought out in its entirety with all the supporting documents. It may be appreciated that at the time of final disposal of the case reliance can be made only on the documents forming part of the records of the case and hence no document which will help the case of the respondents should be left out at the time of making the reply. Besides, the reply is required to be filed within the time allowed by the court, because a reply filed after expiry of time granted by the Tribunal will not form part of the records of the case and will not be taken into account for the purpose of disposal of the case.

2. Rule 12 of the CAT Procedure Rules, 1987 prescribes that each respondent intending to contest the application shall file, in triplicate, the reply to the application and the documents relied upon in the paper book form with the registry. Although each respondent has a right to file a reply, it would be appropriate

to file a common reply in respect of all the official respondents. This must be done with the consent of the departments concerned after ascertaining the views of the respective departments and also after showing the draft to them. The rule further prescribes that the respondent shall specifically admit, deny or explain the facts stated in the application and may also state additional facts as may be found necessary for the just decision of the case.

3. It may seem from the above that the following tasks are involved in the preparation of reply:-

(a) ascertaining the veracity of the facts narrated by the applicant.

(b) Ascertaining the correct facts relating to the issue agitated in the OA.

(c) Exploring the possibility of raising any preliminary objections regarding the maintainability of the OA.

(d) Collection of documents in support of the case of the respondents.

(e) Identification of any identical case filed by any other employee of the department for similar relief. This will not only facilitate easy preparation of the reply but also enable the respondents to move the Tribunal for linking the identical cases to be heard and disposed off together.

(f) Identification of any precedent especially unreported cases which will be known only to the department. This will strengthen the case of the respondents if the earlier decision was in favour of the respondents. Alternatively, it will help the respondents to effectively resist the present OA by removing the defects, which were present on the earlier occasions.

4. After the facts and documents are collected, the process of drafting reply begins. Before the material portion of the reply, there are certain introductory paragraphs required in the reply and the same are as under:-

(a) The identity of the official filing the reply should be given in the opening paragraph.

(b) There should be a recitation to the effect that the officer filing reply is competent and has been duly authorised to file the reply on behalf of answering respondents.

(c) There should be confirmation to the effect that he has read the OA and has understood the contents. It is generally stated that except as has been expressly admitted hereunder, all the material averments in the OA are denied. This may serve as a saving clause in case the respondents have failed to answer any of the averments made by the applicant.

5. The third part of the reply should contain preliminary objection, if any to the respondents desire to take.

6. Often it may not be sufficient for the respondent to simply admit or deny what has been stated by the applicant in the OA. It will be of great advantage if the facts of the case are presented in chronological or logical order in a cohesive manner in its entirety so that the complete details of the case could be understood in one go. It will be a good practice to open the reply of the respondents (after the paragraphs mentioned above), with "Brief Background of the case". This portion should contain all the relevant facts

of course only the relevant facts-which are essential for acquiring complete knowledge about of the case. It may be appreciated that the applicant would be interested only in his case and will be presenting the facts of the case as known to him or as suitable to him. The respondent, being responsible for larger issues, would have taken decision based on certain guidelines by the nodal agencies or as a result of the policy decision, etc. which may not be even known to the applicant. Further, the respondents would also know the repercussions if the applicant's request is accepted. Presentation of these facts in proper perspective goes a long way in enabling the court to appreciate the case of the respondents. It is also worth remembering to "state such additional facts as may be found for the just decision of the case'. Maximum benefit may be drawn from the facility provided to the respondent.

7. Thereafter, parawise reply on merits, on the averments made by the applicant in his OA is given. This is perhaps the most crucial part in the respondent's reply. Every averment made by the applicant must be viewed in its proper perspective and the respondent's version of the same may be given. [For example, assume that an applicant has stated in Para I of his OA 'This application is being filed against the illegal order of suspension passed by Respondent No. 2 vide order No. _____ dated _____ annexed and marked as Annexure A-1". On the face of it, it may appear that there is nothing to counter or contradict what has been stated by the applicant because he has only cited the order against which he is moving the Tribunal. While referring to the order of suspension, he has described the same as illegal'. It would be appropriate to place on record that the impugned order is valid in the eyes of law].

8. The following points are to be kept in view while drafting reply:

(a) In order to avoid repetition of facts, the respondents may invite the attention of the Tribunal to the relevant paragraph.

(b) At times, the applicant might have mentioned certain facts, which are not essential for the purpose of the case and the same may not be within the knowledge of the respondents. For example, an applicant whose pension has been withheld, would have stated facts relating to his domestic problems as well. Under such circumstances the respondents may plead ignorance of the facts simultaneously pointing out that the domestic circumstances are not relevant for determining the legal validity of the impugned order.

(c) On certain occasions, the respondents may not be in a position to comment on the truth or otherwise of the contention of the applicant even though the contention may have a bearing on the case. For example, a person may be pleading that he could not file OA in time because he was suffering from some ailment and hence his prayer for condonation of delay be allowed. Under such circumstances, the respondents may plead ignorance and also submit that 'the applicant be put to strict proof of the averments made by him'.

(d) There may be paragraphs which are formal in nature such as the details of the IPO, etc. Against these paras respondents may state 'being formal, does not call for any reply from the answering respondents'.

9. Finally, the respondents are required to make a formal prayer for the dismissal of the OA. The prayer may be in the following form:

PRAYER

In view of the submissions made hereinabove, in the brief background of the case, preliminary objections and the parawise comments, the applicant is not entitled to any of the reliefs prayed for and the application is liable to be dismissed with costs.

It is prayed accordingly.

10. This is required to be followed by verification by the officer who signs the reply.

11. In the course of the reply, whenever supporting documents are available for substantiating the contention of the respondents, a reference should be made in the body of the reply to the appropriate annexure. The documents annexed to the reply are to be marked as R-1, R-2, R-3, etc. The copies of the documents are required to be attested by a legal practitioner or a gazetted officer as under:

This annexure _____ is the True copy of the original document.

Sd/-
Name and Designation

12. The language of the reply has to be clear, precise and free from ambiguity. The following points may be kept in mind while preparing the reply.

(a) The names of persons and places must be spelt accurately, throughout the reply.

(b) Abbreviations should be avoided as far as possible, especially when they pertain only to Govt. Departments.

(c) Generally pronouns like he, she etc, are avoided in pleadings. Parties are referred through their legal positions e.f. "Applicant No. 3 joined service under Respondent No.3 with effect from ___".

(d) Whenever a statutory provision is referred to, the exact language of the statute should be used. e.g., as per CCS (CCA) Rules, 1965, reduction to lower stage in the time scale for a period not exceeding three years is a minor penalty. Although the phrase 'not exceeding three years' more or less means the same as 'for a maximum period of three years' such conversations should be strictly avoided while drafting pleadings for the court.

13. After the draft reply is made, the same must be got approved by the Govt. Counsel who has been engaged for defending the case. After clearance from the counsel, the draft is required to be got vetted by the Legal Advisor.

14. Rule 4 of the Central Administrative Tribunal Rules of Practice, 1992, relating to the preparation of pleadings is reproduced hereunder for ready reference:

4. Preparation of pleadings and other papers-

(a) All pleadings, affidavit, memoranda and other papers filed in the Tribunal shall be

fairly and legibly typewritten or printed in English or Hindi Language on durable white foolscap paper of Metric A-4 size (30.5 cm long and 21.5 cm wide) on right margin of 2.5 cm duly paginated, indexed and stitched together in paper-book form. The index shall be in form No. 1.

(b) English translation of documents/pleadings shall be duly authenticated by any legal practitioner.

15. The reply can be signed by any of the officers authorised for the purpose. The instructions in this regard are contained in Government of India, Department of Personnel and Training Notification No. A-11019/105/87-AT dated 28th. September 1993 published as GSR630(R) in the Gazette of India at the same time. As per the above notification any Group 'A' Officer in any Ministry/Department of the Government of India or any Desk Officer in any Ministry/Department of the Government of India or any Group A' Officer in any Non-Secretariat Office of the Government of India are authorised to sign all pleadings and other documents to be filed for and on behalf of the Union of India before the Central Administrative Tribunal. The above officers as are acquainted with the facts of the case are also authorised to verify the pleadings. In respect of Contempt Proceedings, however, the officers impleaded by name are required to file the reply.

16. After the reply is complete in all respects and duly signed by the authorised officer, a copy of the same is delivered by hand or sent by registered post, to the applicant or his counsel. The proof of delivery or despatch of the reply to the applicant must be produced before the Registry at the time of filing of reply. The registry gives acknowledgement for receipt of reply.

18.5 Action After Final Orders

1. As you are aware, a case may be dismissed even before you become aware of the fact that the same has been initiated against you. Even after notice, it may be dismissed at the admission stage or after final hearing, due to non-maintainability or lack of merit. Besides, the final order may be dictated immediately on conclusion of the hearing. Such orders are called ORAL orders, (the copies of which will be available in due course) or the case may be reserved for pronouncement of orders. In the later event, the case will figure in the cause list for the day on which it is listed for pronouncement of orders. Such cases, which are listed for the pronouncement for orders, are taken up as the first item of the day. In case, the bench, which pronounces the order, sits only in the afternoon, the list will indicate the same and the order will be pronounced as the first item in the afternoon.

2. In view of the above, it is necessary for the officials pursuing the case to be present in the appropriate courtroom well in time on the date and time fixed for pronouncement of orders. Normally only the operative portion of the order, running for a few sentences is read in the court e.g.

"In view of the foregoing, the Original Application (OA) is dismissed, being devoid of merit, without any order as to cost"

3. There may be occasions when the OA may relate to several alternative remedies or the Judgement may partly allow the OA. Under such circumstances, substantial part of the judgement may be read in the court.

4. In all cases, effort must be made to secure the copy of the judgement at the earliest. The need for obtaining the copy of the judgement is all the more urgent in cases, which have gone against the respondent. Rule 22 of the CAT (Procedure) Rules 1987 provides for the supply of free copies of the interim as well as final orders to the applicant and to the concerned respondent. Generally such copies are given to the Counsels. Officials dealing with the case will have to be constantly in touch with the counsels for obtaining the copy of the judgement at the earliest opportunity. Chapter XVIII of the CAT Rules of Practice 1993 also contains provisions relating to the grant of Certified and Free Copies. As per Rule 118 of the above Rules "A party to an application/petition or his legal practitioner shall be entitled to obtain certified copy of the record, proceedings or original documents filed in case, on payment of prescribed fee". (Strangers are also entitled to receive copy of the orders on payment of fees under Rule 119). Applications for copies of order are to be made in prescribed forms and are to be deposited alongwith a fee of Rs. 5/-. Copying charges are levied @ Re. 1/- per page for ordinary copies and @ Rs. 2/- per page for urgent copies. These facilities may also be availed in case of need, without waiting for the free copy supplied by the Tribunal to the counsel. The date of receipt of the certified copy of the Judgement by the party or counsel is crucial in determining the right of the party for filing Appeal/Review Application. Thus, every effort must be made to obtain the copy of the orders at the earliest as and when the same is ready with the registry.

5. If an OA has been dismissed without any relief to the applicant and without any observation pertaining to the respondent, there may not be any action due on the part of the respondent. Such cases may help as precedent in the event of any subsequent OA being filed on the same issue.

6. At times, even though the applicant is not granted any relief, there may be observations or suggestions for the respondents. Such issues will have to be identified from the orders and pursued diligently.

7. In case the order grants any relief to the applicant, the following courses of action are open to the respondents: -

(a) Implementation of the order

(b) Seeking review of the order

(c) Preferring appeal against the order.

8. Legal advice is obtained before a decision regarding implementation of the order is taken. Implementation of the order is required to be made within the time allowed by the Tribunal. In case no time limit is prescribed, the orders must be complied with at the earliest, at any rate within six months of the date of receipt of the order. Failure to comply with the orders with in the prescribed time limit may result in the applicant moving the Tribunal through Contempt Proceedings.

9. As per Article 323A of the Constitution and Section 17 of the Administrative Tribunals Act, Central Administrative Tribunals have power and authority to punish for contempt. In this regard, CAT exercises the same jurisdiction, power and authority as a High Court under Contempt of Court Act 1971. The Act provides for imprisonment of the party held guilty of contempt. Contempt petitions are required to be dealt with utmost diligence. Any failure in this regard may result in the Tribunal passing order for the personal appearance of the senior officers, besides the final order for contempt. To obviate this difficulty, it would be advisable to request the Tribunal through a Miscellaneous Application (MA) for granting extension of time. MA for this purpose should bring about the following: -

(a) The efforts made by the respondents for early implementation of the Judgment.

(b) The difficulties faced by the respondents in complying with the directions within the prescribed time limit.

(c) Justification for the additional time prayed for.

10. Provisions and procedure relating to the Review of an order of the Tribunal are dealt with separately.

11. As per the original provisions or Administrative Tribunals Act 1985 (Section 28), Special Leave Petition (SLP) to the Hon'ble Supreme Court, under Article 136 was the only remedy available to a party aggrieved by the orders of the Tribunal. However, the position has undergone a change with the recent decision of the Hon'ble Supreme Court in L Chandra Kumar Vs Union of India & Others (1997(3) SCC 261) wherein the Apex court has laid down as under:-

"All decisions of the Tribunal will, however be subject to scrutiny before a division Bench of the High Court within whose jurisdiction the concerned Tribunal falls."

12. Thus, presently, a party claiming to be aggrieved by a decision of the Tribunal has to move the High Court.

13. Any decision to seek remedy by way of Review or Appeal will have to be taken in consultation with the Law Ministry and the case pursued in accordance with the procedure laid down for the purpose.

14. It is also relevant to note that the above-mentioned provisions are not confined only to the case of final orders of the Tribunal. An interim order is also required to be complied with within the time limit prescribed by the Tribunal. Extension of time can be prayed in such cases also. In case a party feels aggrieved by the interim order of the Tribunal, the above mentioned remedies can be resorted to.

18.6 Review Application

1. Section 22 of the Administrative Tribunals Act, 1985 relates to the procedures and powers of the Tribunals. This section provides that power of reviewing a decision by the Central Administrative Tribunal is one of the matters in which the Tribunal shall have the same power as are vested in a Civil Court under the code of Civil Procedure 1908(5 of 1908).

2. Under the Civil Procedure Code, Review of an order is permissible under the following circumstances: -

(a) On the basis of discovery of new and important matter of evidence which after exercise of due diligence, was not within the applicant's knowledge or could not be produced by the party at the time when the order was passed.

(b) On account of mistake or error apparent on the face of the judgement.

(c) Or for any other sufficient reason.

3. It must be appreciated that the scope of review is much limited as compared to appeal. A review cannot be sought for fresh hearing of the argument or for correction of allegedly erroneous view taken earlier, but only for correction of a patent error of fact which stares in the face without any need for elaborate arguments e.g. if it is stated in an order that,

"the respondents are therefore directed to refix the pay of the applicant to the post of Assistant, in the scale of Rs.2000-3500 at par with respondent No. 5 with effect from 01/10/92 and to suitably revise the pay of the applicant in the scale of Section Officer with effect from his date of promotion i.e. 20.01.95".

Detailed argument is not necessary to establish that there is an error on the face of the judgement.

4. It must be appreciated that a party will not be allowed to re-open a case under the guise of review. A plea not taken in the OA cannot be raised as ground of review. Further, review cannot be granted on the ground that the Govt. file was shown only to the Tribunal and not to the applicant; such a request should have been made at the time of hearing of the OA itself.

5. As per Rule 17 of the CAT (Procedure) Rules, 1988 a Review application is required to be filed within 30 days from the date of receipt of the copy of the order which is sought to be reviewed. This period is counted from the date of receipt of order by the party or its counsel. There are also provisions for seeking condonation of delay. The delay caused on account of complying with the procedural requirements of the Government machinery, (Consultation with Law Ministry, obtaining approval of the Competent Authority, etc) have been accepted as sufficient cause for condonation of delay. (Union of India Vs Dharampal (1989) 11 ATC256). Notwithstanding such liberal approach by the courts, it is imperative that the case for filing of review application is processed with due urgency. Every effort must be made to file the Review Application within the prescribed period of limitation.

6. As per the above-mentioned rule, a review application can be disposed off without listing it for hearing. Under such circumstances, the case is decided by circulation among the members who heard the case in the first instance.

7. As per Rule 17(5) of CAT Procedure Rules, 1987, a review application is required to be supported by a duly sworn affidavit, indicating therein the source of knowledge, personal or otherwise (i.e. based on official records in the custody of the deponent) and also those which are sworn on the basis of legal advice. The Counter-Affidavit in Review application is also required to be a sworn affidavit whenever any averment of fact is disputed.

8. The right of a party to seek review is without prejudice of its right to appeal. It has also been held that a review application can be pursued even after losing an SLP against the same judgement. However, the party is required to keep the courts informed of the fact that he is pursuing an alternative remedy as well.

9. Normally, the pendency of review application is accepted as a valid defence in contempt proceedings arising on the plea of non-implementation of the judgement. As a measure of caution, it would be appropriate to bring this fact to the notice of the court and pray for extension of time for implementation or stay of the judgement.

18.7 Action by the Main Respondent (concerned office) on receipt of court case

1. Enter the case in the list/register of court cases

2. Prepare a photocopy (clearly legible) of the OA/CWP received from the Court/Nodal office/ HQrs office.

3. Forward immediately the notice (in original) received from the court with legible photocopy of

OA/CWP to the concerned Nodal officer for engaging a Govt counsel and for monitoring the case.

4. Forward a copy of the OA/CWP to HQ office alongwith a short statement of the case.

5. Examine the issues involved in the OA/CWP/Suit.

6. Prepare

(i) Statement of case

(ii) Parawise comments

7. Forward to the Nodal officer, documents referred at SL.No 6 above along with legible photocopy of rules and regulations in support of the parawise comments, for getting draft counter reply prepared by the Govt counsel.

8. On receipt of draft counter reply from the Nodal officer prepare the following set of documents in triplicate (only in those cases where vetting of Ministry of Law & Justice is required through HQrs office) for transmission to HQrs office: -

a. Statement of case

b. Parawise comments

c. OA/CWP

d. Draft counter-reply/Counter affidavit

9. On receipt of vetted copy from HQrs office, take the following action: -

a. Prepare counter reply with Index (six copies).

b. Signatures of Group-'A' officer, duly affixed with his official seal, at appropriate place on all the six copies or as advised by the CGSC.

c. Signatures of a Gazetted officer on annexures, if any, duly affixed with his official seal.

10. Send the counter reply (six copies) mentioned at SL.No 9 above to the Nodal officer for getting the same filed in court through the Government Counsel.

11. Monitor the Court case and intimate the outcome of every hearing to the HQrs office through Fax-message/E-mail till its finalisation.

12. On receipt of court orders forward the same (in duplicate) along with the legal opinion of the Govt counsel.

13. Await instructions from HQrs office on implementation of court orders or otherwise.

14. If HQrs office directs to implement the court order, take immediate action to implement the orders within the stipulated period.

15. If HQrs office directs to prefer an appeal against the said order take immediate steps to challenge the order in the next higher court.

16. If action is taken as mentioned at SL.No 14, render an implementation report to HQrs office on compliance of court orders.

17. If action is taken, as mentioned at SL.No 15 above, take action by following the necessary steps for challenging the Court order as mentioned above.

18. Release payment to the Govt counsel as per instructions issued by Min of Law and Justice from time to time.

19. Update the list/register of cases, regularly.

20. Send reports of court cases to HQrs office regularly as desired from time to time.

18.8 ACTION BY THE NODAL OFFICE ON RECEIPT OF COURT CASE

1. Enter the court case received from the main respondent in the list/register of court cases.

2. Engage a Govt. Counsel immediately to defend the case.

3. Seek extension of time in case the next date of hearing is at a very short interval.

4. Intimate the date of hearing to the concerned office (main respondent) and HQrs. Office.

5. Maintain a constant liaison with the concerned office for getting parawise comments to the court case.

6. Liaise with the Govt. Counsel and brief him on complete facts of the case and the relevant Rule position on the subject, to enable him defend the case in the best interest of the UOI.

7. Get the counter-reply prepared from the Govt. Counsel at the earliest.

8. Examine the draft counter-reply prepared by the Govt. Counsel.

9. Transmit the same back to the concerned office.

10. On the receipt of counter reply duly signed by the competent officer file the same in the court through the Govt. Counsel.

11. Detail representative to attend the court on every date of hearing and intimate the outcome of hearing to the concerned office and HQrs. Office trough Fax. /E-mail.

12. Procure a copy of the judgement and transmit the same to the concerned office and HQrs. Office along with the opinion of the Govt. Counsel regarding the feasibility of filing a review/appeal in the next higher court.

13. Obtain in writing from the Govt. Counsel a list of documents required to be produced in the court.

14. If notices are issued and handed over to the Govt. Counsel by the court pertaining to the DAD cases collect the same along with the letter of the Govt. Counsel and dispatch the same to the concerned Controller's office.

15. Update the list/register of court cases, regularly.

CHAPTER - XIX

APPENDIX

Form of Original Application ——(I)

[Rule 4 of CAT (Procedure) Rules 1987]

Application under Section 19 of the Administrative Tribunals Act, 1985

Title of the case _____

INDEX

SL.No	Description of documents	Page No.
1.	Application	
2.		
3.		
4.		
5.		
6.		

Signature of the applicant

For use in Tribunal' Office

Date of filling _____

Or

Date of Receipt by post _____

Registration No. _____

Signature
For Registrar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

————————BENCH

APPLICANT

(Name of the Applicant and description such as son of, resident of and place of employment or last employed————————)

Vs

RESPONDENTS

(Description and the residential or official address on which the service of the notices is to be effected on the respondent or respondents. The details of each respondent are to be given in a chronological order).

DETAILS OF APPLICATION

1. **Particulars of the order against which the application is made.**

(Particulars of the orders giving the details like the number, date and the authority that has passed the order, against which the application is made)

2. **Jurisdiction of the Tribunal:**

3. **Limitation**

4. **Facts of the case** (Concise statement of facts in a chronological order, each paragraph containing as nearly as possible a separate issue or fact)

5. **Grounds for relief with legal provisions:**

6. **Details of the remedies exhausted** (Chronological details of representation made and outcome of such representations with reference to the cause agitated)

7. **Matters not previously filed or pending with any other Court.**

8. **Relief(s) sought**

In view of the facts mentioned in the Para 6 above the applicant prays for the following relief(s). {Relief(s) sought to be mentioned explaining the grounds for such relief and legal provisions, if any relied upon}

9. Interim order, if any, prayed for

10. In the event of application being sent by Registered Post

11. Particulars of Bank draft/Postal Order filed in respect of the application fee:

12. List of enclosures:

VERIFICATION

I,_____(Name of the applicant), S/O, D/O, W/O_____ age _____ working as _____ in the Office of _____ resident of _____ do hereby verify that the contents of paras _____ to _____ are true to my personal knowledge and para _____ to _____ believed to be true on legal advice and that I have not suppressed any material facts.

Date:

Place: Signature of the applicant

To

The Registrar,

_____

_____

Form of Miscellaneous Application ——(II)

[Rule 8 (3) of CAT (Procedure) Rules, 1987]

[An application may, subsequent to the filing of an application under Section 19 of the Act, apply for interim order or directions in the following Form.]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

_____ BENCH

Misc. Application No._____ of_____

In

Original Application No._____ of 20___

Vs.

_____ Applicant

(Applicant/Respondent)

_____ Respondent

(Respondent/Applicant)

Brief facts leading to the application:

Relief or Prayer:

VERIFICATION

I,_____(name of the applicant), S/O, D/O, W/O_____

Age_____ working as _____ in the Office of _____

Resident of_____ ___ do hereby verify that the contents of Para_____

to _____ are true on legal advice and that I have not suppressed any material fact.

Place: Signature of the Applicant

Date: Signature of the Advocate

Form of Affidavit ——(IV)

(Rule 81 (a) of Central Administrative Tribunal, Rules of Practice, 1993)

CENTRAL ADMINISTRATIVE TRIBUNAL

.....BENCH

OA/RA/TA/PT/CP(Civil)/CP(Criminal)/No..... of 20.....

.....Applicant/s

Vs.

.....Respondent/s

AFFIDAVIT

I,..... aged..... years, son/daughter/wife of ..... (name and occupation of the deponent)..... residing at..... do hereby swear in the name of God/ solemnly affirm and state as follows:-

Para 1

Para 2

Para 3

_____

_____

Contents of Paragraphs Nos..... are within my personal knowledge and content of Paragraphs Nos..... are based on information received by me which I believe the same to be true (state the source of information wherever possible and the grounds for belief, if any).

Place: Signature of the Deponent

Date: Name in Block letters

No. of corrections on Page Nos.

FORM OF VAKALATNAMA— (III)

(Rule 67 of Central Administrative Tribunal, Rules of Practice 1993)

CENTRAL ADMINISTRATIVE TRIBUNAL

.....BENCH

OA/RA/CP/PT /No..... OF 20.....

.....Applicant/s

Vs

.....Respondent/s

I,..... Applicant No...../Respondent No..... in the above application/petition do hereby appoint and retain Shri..... Advocate/s to appear, plead and act for me/us in the above application/petition and to conduct and prosecute all proceedings that may be taken in respect thereof including Contempt of Court Petitions and Review Applications arising therefrom and applications for return of documents, enter into compromise and to draw any money payable to me/us in the said proceeding.

Place:

Date:

Signature of the Party

Executed in my presence.

Accepted"

Signature with date

(Name of Advocate)

Name and address of the

Advocate for Service

Identified by:

..... sworn/solemnly affirmed before me on this the ..... Day of ..... 20.....

Signature

(Name and Designation of the Attesting Authority with Seal)

Form of Notice to the respondents in Contempt—— (V)

(Rule 8 (ii) of CAT (Contempt of Courts) Rules 1992)

Notice to Respondent

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

(Name of the Bench) Place

Contempt Petition Civil/Criminal No._____

Petitioner_____

Vs

Respondent _____

(here mention the name and address of the person to whom notice is being sent).

Whereas information is laid/a petition is filed/motion is made by _____ that you (here mention the gist of the accusation made in the information/petition/motion _____)

And whereas a petition has been registered for action being taken against you under the Contempt of Courts Act, 1971;

You are hereby required to appear in person or through a duly authorized advocate on _____ day of _____ at _____ and on subsequent dates to which the proceedings are adjourned, unless otherwise ordered by the Tribunal, and show cause why such action as is deemed fit under the Contempt of Courts Act, 1971, should not be taken against you.

Given under my hand and the seal of this Tribunal, the _____ day of _____ 20 _____

Seal

Registrar
Central Administrative Tribunal

CHAPTER - XX

CAT TERMS

Affidavit	A written declaration on oath.
Applicant	The person who files an application before the Tribunal. It is also relevant to note that the person who files a suit in the civil court is known as a Plaintiff and the one who files a Writ Petition is known as Petitioner
Application	The basic document from which a litigation before the Tribunal commences. Full form is Original Application (OA). See also: Review Application, Miscellaneous Application, Reply, Rejoinder and CCP.
Members	This term includes Chairman, Vice Chairman & Members when they are performing judicial function.
Bench	The word is used in three different senses: (i) Judge e.g. one must have utmost respect for the Bench; (ii) The Station where a part of the Court/Tribunal is located e.g. Lucknow bench of the Allahabad High Court; Ernakulam Bench of the CAT. (iii) The composition of the judicial body hearing/deciding a case e.g. the case was heard by a division bench.
Cause List	The list issued by the court every day indicating the items which will be taken up on the next day.
BTF	Brief Transmission Form-The form under which the Law Ministry assigns a case to a Court counsel.
CCP	(Civil Contempt Petition) A petition filed by a party alleging that some one has committed an act of contempt against the court. Normally, the delay in implementation of the order of the CAT may result in the filing of CCP.
Contempt	An act through which a person has displayed lack of respect for the judiciary e.g. disobedience of the order of the court, making derogatory statements against the judiciary etc.
Cost	As per rule 111 of the CAT Rules of Practice, 1993, the CAT has powers to levy cost on a party. Normally, the cost may be imposed on the applicant. Cost may be imposed on the respondent, if in the opinion of the court, the respondent has acted unreasonably and has forced the applicant to seek judicial redressal.

Division Bench	A Body comprising two judicial personnel for hearing and deciding an issue.
Default	In general term it means absence. If a party who files an application fails to pursue it, the case may be lost by default. See also restoration.
Deponent	The person who signs an affidavit.
Estoppel	A Principle by which a party to a proceedings is precluded from making certain contention. For details please see Section 115 of the Indian Evidence Act, 1872. Estoppel can be taken as a Preliminary Objection.
Ex-parte	Without the participation of a party. If a party to a case is absent when the case is taken up for hearing, the case may be heard and decided ex-parte.
Interim Order	The order passed by the court pending disposal of the main issue e.g. the applicant shall not be reverted from his present post pending disposal of the OA.
Index	The covering page for paper (OA, reply, affidavit etc.) filed before the Tribunal. The form of the Index sheet has been prescribed under Rule 11(a) of the CAT Rules of Practice, 1993.
Jurisdiction	The geographic area and the subjects over which a court's powers extend e.g. (1) Calcutta Bench of the CAT has jurisdiction over West Bengal and Andaman and Nicobar Islands. (2) Consumer Court does not have any jurisdiction to decide an issue relating to the seniority of Central Secretariat Employees.
Limitation	The period prescribed by law within which an aggrieved party should move the court e.g. Review Application must be filed within 30 days of the receipt of the order.
On board	After the written submission are completed, i.e. OA, Reply and rejoinder are filed, the case is said to go ón board' to be taken up for final hearing in its turn. Similarly, the cases listed for regular hearing, if they could not be taken up due to paucity of time, will remain on board, i.e. they will figure in the list for the next day. unless a request is made by either of the parties for taking up the case some time later.
Oral Order	The order dictated by the bench in the open court as and when the hearing is concluded. Such orders are also reduced to writing and copies sent to the parties in due course.

Part heard	If the final hearing of a case cannot be concluded on the same day on which it was taken up, hearing will be continued on some other day. Such cases are known as part heard cases. Further hearing of these cases will be heard only by the same bench which heard it on the earlier occasion. These cases will appear on top of the cause list.
Pleadings	A word used to refer collectively to the written submissions in a case e.g. Pleadings in the case are complete i.e. the Reply and Rejoinder have been filed (or the right to file Reply/Rejoinder has been forfeited). It is also relevant to note that as opposed to the noun pleadings, the verb 'plead' means argue, content etc. e.g. he pleaded his case very efficiently.
Preliminary Objection	A case can be contested on merit as well as on maintainability. At times the opposing party may be able to win the case without going into or commenting upon the merits of the case e.g. A claim for revision of seniority may be objected on the ground that the applicant has failed to agitate the matter for a long time and the case is hit by delay and leches. Such objections which do not have a bearing on the merits of the cases are known as preliminary objections. Limitation, Resjudicata, estoppel etc. are some preliminary objections.
Presenting Officer	As per Section 23(2) of the Administrative Tribunal's Act, 1985..... or through one of its officers known as Presenting Officer. As per DO P&T's instruction on the subject, a Group A officer can be nominated as Presenting Officer with the approval of the Minister concerned. Presenting Officer can file reply and argue the case on behalf of the respondents.
Rejoinder	The document through which party who files an application before the Tribunal rebuts the averments made by the respondent in 'reply'. Thus, the applicant files the OA. The respondent files his 'reply' wherein he can refute the statements made in the OA. In response to the 'reply' of the respondent.
Reply	The document filed by the respondent wherein he admits or denies or clarifies the averments made in the OA.
Res-judicata	A doctrine which prevents repetition of litigation between the same parties over the same issue. If an OA filed by an applicant has a direct bearing on an earlier case, the respondent may consider setting up the plea of Res-judicata as a preliminary objection.(For details please see Rule 11 of the Civil Procedure Code, 1908).
Respondent	The party against whom the proceedings have been initiated. There may be more than one respondent in a case. It is also likely that some of the respondents in a case may be private parties who are not impleaded on account of any official act. Such parties are known as Private respondents.

Restoration	If an application is dismissed in default i.e. for non-appearance of the applicant or his counsel to pursue the case, the applicant is entitled to move the Tribunal within 30 days for restoring (or reviving) the dismissed application, by showing reasons for his absence on the previous occasion. Such a process is known as restoration. An application filed for this purpose is termed as MA for restoration. The provision in this regard are contained in Rule 15 of Central Administrative Tribunal (Procedure) Rules, 1987.
Review Application (RA)	A party who is aggrieved by an order of the court may, without prejudice to his right for appeal, file an application before the same court (with whose judgement he is aggrieved) for review of the earlier order. Review is permissible under certain select grounds only and its scope is much limited as compared to appeal. Period of limitation of filing RA is 30 days.
Single Bench	A judicial body comprising only one authority (judge, member etc.) for hearing and deciding the issue.
Special Leave Petition (SLP)	As per Article 136 of the Constitution, the Supreme Court has power to grant Special Leave to appeal from any judgement from any Court or Tribunal. Until March 97, the only scope available (Other than RA) for a person aggrieved by the judgement of the CAT was to move the Supreme Court through a Special Leave Petition (Consequent to the judgement in L. Chandra Kumar Vs Union of India, aggrieved party can now move the High Court also).
Ultra Vires	Literally it means without authority. Provision of services may be challenged as being Ultra Vires.
Verification	The reply filed before the CAT is required to be verified by an authority competent to do so. Any Group A officer of the GOI or any Desk Officer of the Ministry/Department who is conversant with the facts of the case can verify the contents of the pleadings.

CHAPTER - XXI
SUGGESTED READINGS

SL.No	NAME OF BOOKS
1.	JUDICIAL DICTIONARY
2.	CONSTITUTION OF INDIA (Dr. DURGA DAS BASU)
3.	CODE OF CIVIL PROCEDURE (UNIVERSAL LAW)
4.	INDIAN PENAL CODE
5.	THE LIMITATION ACT, 1963
6.	THE ADMINISTRATIVE TRIBUNALS ACT 1985
7.	CENTRAL ADMINISTRATIVE TRIBUNAL (SWAMY)
8.	THE INDIAN EVIDENCE ACT, 1872
9.	LAW OF CONSUMER PROTECTION
10.	PAYMENT OF WAGES ACT
11.	TRIBUNALS JUDGEMENTS
12.	ESTABLISHMENT & ADMINISTRATION (SWAMY)
13.	DISCIPLINARY PROCEEDINGS (SWAMY)
14.	TEMPORARY SERVICES RULES (SWAMY)
15.	CONDUCT RULES (SWAMY)
16.	GROUP INSURANCE SCHEMES (SWAMY)
17.	MEDICAL ATTENDANCE RULES (SWAMY)
18.	LEAVE TRAVEL CONCESSION RULES (SWAMY)
19.	GENERAL PROVIDENT FUND RULES (SWAMY)
20.	GFR (SWAMY)
21.	CONFIDENTIAL REPORTS (SWAMY)
22.	RE-EMPLOYED PENSIONERS (SWAMY)
23.	SENIORITY & PROMOTION (SWAMY)
24.	RESERVATION & CONCESSIONS (SWAMY)
25.	PENSION COMPILATION (SWAMY)
26.	FRSR-I (GENERAL RULES)
27.	FRSR-II (TA) (SWAMY)
28.	FRSR-III (LEAVE RULES) (SWAMY)
29.	FRSR-V (HRA & CCA) (SWAMY)
30.	CCS (CCA) RULES (SWAMY)
31.	SWAMY'S ANNUAL (ORDERS ON SERVICE MATTERS)
32.	SWAMY'S NEWS (MONTHLY MAGAZINE)