

**PROCEEDINGS OF THE COURT CASES MEETING HELD WITH  
LAW OFFICERS AND CHIEF LAW ASSISTANTS ON 27.12.2019**

Shri N. Murali Krishna, Sr. LO  
Shri M.V. Ramana, LO/Hqrs

Shri K. Gopinath, CLA/Hqrs  
Shri S. Venkateswarlu, CLA/Engg/HQ  
Shri E. Satyanarayana, CLA/PCPO/HQ  
Shri S. Nagender, CLA/HYB  
Shri A. Bhagwat Prasad, CLA/G/HYB  
Shri G.S. Ratnakumar, CLA/BZA  
Shri D.R.V.S.S.S.N. Raju, CLA/G/BZA  
Shri Syed Amjad Ali, OS/Law

**Principle of reasonable opportunity of hearing – Language of Charge Sheet:**

Shri K. Gopinath, CLA/HQrs presented the judgement of Hon'ble Supreme Court dated 1<sup>st</sup> May 2013 in Civil Appeal No.4472/2013 in the matter of Mithilesh Kumar Singh Vs. Union of India. In this case, even after the appellant requesting for supply of charge sheet in Hindi language, the department denied to supply the same. Supreme Court observed that Rule 5 the Official Languages Act, 1976 provides that the communications received by the Central Government office in Hindi must be replied to in Hindi language only. The Apex Court also held that even the order of the Naval Dockyard, Mumbai, dated 29.01.2002 reiterates the same position in respect of replies to the applications, appeals and representations received or even appended with a signature in Hindi language. The Apex Court thus, allowed the appeal holding that the appellant has been denied of reasonable opportunity of explaining his position by denying supply of charge sheet in Hindi language.

**Stepping up of pay -** Shri D.R.V.S.S.S.N. Raju, CLA/BZA presented the judgement dated 14.11.2019 of the Principal Bench, CAT/NDLS in OA No.1348/2014 in the matter of Paramjit Singh Vs. Union of India. The Tribunal held that the OA is devoid of merits observing that the initial cadre of the Applicant and Shri Anil Kumar was different even though both were driving a locomotive the cadre and seniority for Diesel Loco and Electric Loco is different and thus, the conditions stipulated in Board's letters 04.09.2008 and 24.07.2009 for stepping up of pay are not fulfilled.

**Jurisdiction of National Commission :** Shri M.K. Shaji, CLA/HQ presented the Judgement of Supreme Court dated 04.12.2019 in Civil Appeal No. 9317 of 2019 in the matter of Shiur Sakhar Karkhana Pvt. Ltd Vs. SBI. The Supreme Court observed that availability of an alternative and efficacious remedy is not an absolute bar on the jurisdiction of the High Court under Article 226 of the Constitution, and it is a rule of discretion and self-imposed limitation rather than that of law. Entertaining a writ petition in a case may be proper in certain circumstances, for instance when an order has been passed in total violation of the principles of natural justice, or has been passed invoking repealed provisions.

**Reckoning of 50% of casual service for purposes of pension:** Shri S. Venkateswarlu, CLA/Engg/HQ has presented the judgement of the Apex Court in CA No.3938/2017 in the matter of Union of India & Ors. Vs. Rakesh Kumar. The Supreme Court held that in deserving cases, on a request made in writing, the Pension Sanctioning Authority shall consider as to whether any particular case deserves to be considered for recommendation for relaxation for sanction of pension under Rule 107 of Rules, 1993.

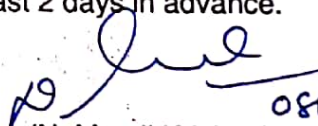
**Disciplinary proceedings are not quasi-criminal in nature:** Sr.Law Officer/Law Branch has presented the judgement dated 18.12.2019 delivered by the Hon'ble Supreme Court in 7279/2019 in the matter of Uttarakhand Transport Corporation Ltd. Vs. Heerasingh Parihar, wherein the Apex Court observed that disciplinary proceedings are not quasi criminal in nature. A disciplinary inquiry is conducted by the employer to inquire into a charge or misconduct pertaining to a breach of the rules and regulations governing the service of the employer. The standard of proof is not that governed by a criminal trial.

**Fixation of pension is related to pay but not the post :** Shri S. Nagender, CLA/HYB presented judgement of the Supreme Court dated 23<sup>rd</sup> November 2006 in CA No.3174/2006 in the matter of K.S. Krishnaswamy & Anr. Vs. Union of India. In the appeal, the controversy relates to the scale of pay recommended by the 5th Pay Commission and corresponding acceptance of the Government by a Policy decision dated 30.9.1997 and executive instructions dated 17.12.1998. The Supreme Court upheld the view taken by the Madras High Court that the clarificatory executive instructions in O.M. dated 11.5.2001 are an integral part of the O.M. dated 17.12.1998 clarifying the Policy Resolution of the Government dated 30.9.1997 and do not over-ride the original O.M. dated 17.12.1998.

**Encashment of bank guarantee in terms of bank guarantee – Courts cannot interfere -** Shri A. Bhagwat Prasad, CLA/HYB presented the judgement dated 18.12.2019 in CA No.9288/2019 in the matter of Standard Chartered Bank Ltd. Vs. Heavy Engineering Corporation Ltd. The Supreme Court dismissed the appeal holding that except in case of fraud, irretrievable injustice and special equities, it is not even open for the Court to interfere with the invocation and encashment of the bank guarantee so long as the invocation was in terms of the bank guarantee.

**Section 34(5) of the Arbitration and Conciliation Act, 1996 is directory:** Shri G.S. Ratna Kumar, CLA/BZA presented the judgement dated 30.07.2018 in CA No.4475/2017 in the matter of State of Bihar Vs. Bihar Rajya Bhoomi Vikas Bank. Holding that Section 34(5) of the Arbitration and Conciliation Act, 1996 is directory, the Apex Court stated that since there is no consequence provided in the said provision in case of non-compliance thereof, the said provision cannot be considered as mandatory. The purpose of avoiding any delay in proceeding with the matter expeditiously has already been served with appropriate rules.

Next Meeting will be held on 24<sup>th</sup> January, 2020. All the members are requested to come prepared to the CLA's meeting and present at least one case. Brief of the case may be emailed to loscrhq@gmail.com at least 2 days in advance.

  
08/01/2020  
(N. Murali Krishna)  
Sr. Law Officer

G.265/V/IV/Misc./Meeting/2019

Date: 08.01.2020

To  
All ADRMs, CCO/SC, PCPO/Hqrs, Sr.LO/P/Hqrs, LO/HQ,  
All CLAs – for information please.