

**PROCEEDINGS OF THE COURT CASES MEETING HELD WITH
LAW OFFICERS AND CHIEF LAW ASSISTANTS ON 24.01.2020**

Shri N. Murali Krishna, Sr. Law Officer
Shri M.V. Ramana, Law Officer

Shri K. Gopinath, CLA/Hqrs
Shri M.K. Shaji, CLA/Hqrs
Shri V. Apparao, CLA/Hqrs
Shri E. Satyanarayana, CLA/PCPO/HQ
Shri A. Bhagwat Prasad, CLA/G/SC
Shri S. Nagender, CLA/HYB
Shri G.S. Ratnakumar, CLA/BZA
Shri G. Kumar Kotappa, CLA/GTL
Shri S. Srinivas, CLA/GNT
Shri Syed Amjad Ali, OS/Law

Courts cannot substitute a scheme or add or subtract from the terms thereof in judicial review: Shri Kumar Kotappa, CLA/GTL has presented the judgement dated 18th January 2020 of the Apex Court in the matter of Indian Bank & Ors Vs. Promila & Anr. Allowing the appeal, the Court observed that as per the scheme applicable at the time of death of the employee, either gratuity or compassionate appointment is allowed. Since the applicant has been granted gratuity, CG appointment cannot be claimed under subsequent scheme and High Court erred in directing Bank to provide appointment under CG, amounting to substituting the existing scheme, which is impermissible.

Principle of res-judicata: Shri S. Srinivas, CLA/GNT has presented the judgement of the Central Administrative Tribunal, Mumbai Bench's common order dated 17th December, 2019 in OA Nos.537, 572 & 573 in the matter of Harischandra R. Shukla Vs. Union of India. In the OAs, the applicants contested that they should have been promoted w.e.f. 1.11.2003 instead of 27.02.2013. The Tribunal observed that the issue raised by the applicant has already been raised by the applicants in the previous round of litigation vide OA Nos.614, 652/2004 decided by judgement dated 11.03.2005. The Tribunal hence held that the present OAs are barred by res-judicata and therefore, deserves to be fail.


High Court under judicial review cannot act as a fact finding authority and cannot sit in appeal : Shri M.K. Shaji, CLA/Hqrs presented the judgement of the Supreme Court dated 3rd November, 2014 in CA No.10385/2014 in the matter of UOI Vs. P. Gunasekharan. The Apex Court held that in disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. Setting aside the judgement of the High Court, the Apex Court further held that the jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings.

Personnel not eligible, cannot be allowed to sit in selection to which they are prohibited: Shri V. Apparao, CLA/HQrs has presented the judgement of the High Court of Patna dated 18th May 2017 in Civil Writ Jurisdiction No.1994/2017 in the matter of Alok Kumar Vs. UOI. After a careful perusal of para 170 of IREM, the High Court of Patna, held that the RPF / RPSF cannot be said to be covered within

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the meaning of "other Department staff". RPF/RPSF personnel have been debarred from appearing in GDCE examination, including any kind selection to be held in other departments of the Railways. Holding that the act of reverting the applicant from the post of Law Assistant was not an arbitrary or illegal order, the High Court dismissed the writ application.

Next Meeting will be held on ~~28~~²⁹ February, 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.


(N. Murali Krishna)
Sr. Law Officer
12/2/2020

G.265/V/IV/Misc./Meeting/2020

Date: 12.02.2020

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