PROCEEDINGS OF THE COURT CASES MEETING HELD WITH LAW OFFICERS AND CHIEF LAW ASSISTANTS ON 21st JUNE 2019

Ms. Chandrima Roy, SDGM
Shri N. Murali Krishna, Sr. LO
Shri I.V.V.R.P. Prasad, LO/HQ
Shri M.V. Ramana, LO/HQ
Smt. T. Satyavathy, LO/SC Divn

Shri K. Gopinath, CLA/HQ
Shri Shaji M.K, CLA/HQ
Shri V. Apparao, CLA/HQ
Shri S. Venkateswarlu, CLA/PCE/HQ
Shri E. Satyanarayana, CLA/NG/HQ
Ms. Vijitha, CLA/Gaz/HQ
Shri Sunil Kumar, CLA/CCO
Shri M.A. Anil Kumar, CLA/CCO
Shri S.K. Dash, CLA/CCO
Shri Debhashish Pattnaik, CLA/CCO
Shri B.R.R. Naidu, CLA/CAO/CN
Shri Stanly Paul, CLA/SC
Shri A. Bhagwat Prasad, CLA/G/SC
Shri S. Nagender, CLA/HYB
Shri G.S.Ratna Kumar, CLA/P/BZA
Shri D.R.V.S.S.N. Raju, CLA/G/BZA
Shri S. Srinivasu, CLA/GNT
Shri G, Kumar Kotappa, CLA/GTL
Shri Ashok Kumar, CLA/NED
Shri Amjad Ali, OS/GM/Law.

SDGM presided over the meeting. Addressing Law Officers and CLAs SDGM stated that though the job of Law department is very important and is not distinctly defined. They have to perform the important task of liaison between executive and Railway Advocates. Since Law Assistants are well-versed with functioning of administration and also equipped with legal knowledge, they can effectively present the perspective of the administration to the courts through Railway Counsels for effectively winning the court cases.

SDGM advised that as an individual fights for winning his own court case, the Law Assistants also should strive hard to win the cases for the administration with the same spirit and zeal. SDGM also advised them to constantly monitor listing of the cases. SDGM stated that maintaining integrity is of paramount importance. She pointed out that though there is nothing wrong in CLAs approaching courts for redressing their genuine grievances, approaching courts every now and then on flimsy grounds for their own cases, cannot be appreciated.

Some of the Law Assistants brought to the notice of SDGM that Law Department in the Divisions is short-staffed both in respect of CLAs and ministerial staff and needs to be strengthened. SDGM advised Sr.Law Officer to assess the set-up of law departments in other Zonal Railways for arriving at a better picture. CLA/BZA informed that there is problem in getting the status of various court cases pertaining to Divisional Engineering department. SDGM assured that she will bring it to the notice of PCE. Shri M.K. Shaji, CLA/HQ pointed out that though all the railway advocates are supposed to furnish a monthly statement of court cases position handled by them, none of them are submitting. SDGM advised that instructions to this effect may be incorporated while issuing empanelment letters to the Railway

advocates. To the request for holding workshops for CLAs on a specific subject, SDGM suggested that one of the monthly CLAs meeting may be utilized for the purpose of holding workshop covering 2-3 subjects. SDGM advised that to assess the workload, all the CLAs may submit a monthly statement indicating the opinions rendered by them during the month.

Judgements presented by Chief Law Assistants

:(i) Railway employees are covered under Consumer Protection Act for the purpose of medical facilities from railway hospitals

Shri Shaji M.K., CLA/HQ presented the judgement dated 13th November, 1995 of the Hon'ble Supreme Court in the matter of Indian Medical Association vs V.P. Shantha & Ors. [1996 AIR 550, 1995 SCC (6) 651]. In this case, the Hon'ble Supreme Court held that where, as a part of the conditions of service, the employer bears the expenses of medical treatment of an employee and his family members dependent on him, the service rendered to such an employee and his family members by a medical practitioner or a hospital/nursing home would not be free of charge and would constitute part and parcel of service condition. Subsequently, this judgement has been relied upon by the Hon'ble Supreme Court while deciding a similar issue in the matter of Laxman Thamappa Kotgiri Vs. G.M. Central Railway [2007 (4) SCC 596].

(ii) In personam relief – Treatment of halt period at destination station as duty:

Shri D.R.V.S.S.N. Raju, CLA/G/BZA presented judgement dated 9th May 2019 delivered by the Hon'ble Central Administrative Tribunal, NDLS Bench in OA No.250/2017 in the matter of Hiralal & Ors. Vs. Union of India. The applicants are working as AC Technicians in Delhi Division of Northern Railway and their duty is to ensure AC functioning of AC in AC Coaches from Originating station to Destination station. Applicants contested that not counting of halt period at destination station as duty and not paying them overtime allowance is not proper. Applicants relied on CAT/Mumbai's order in OA No.117/2008 wherein the Tribunal allowed the OA holding that they are entitled to claim overtime allowance for duration of halt at destination station.

The Tribunal held that there is no justification that the halt period at destination station should also be added to the duty period of the staff and for it to be counted for overtime. The relief granted by the Mumbai Bench in OA 117/2008 was in the nature of in personam relief. Accordingly the directives in OA 117/2008 are not applicable straightaway to all such staff in all situations as a routine and accordingly OA was dismissed. An *in personam* judgment binds only the litigants. CCAs also stated that the conditions of duty are different from Zone to Zone and hence, case of one Railway cannot be compared with another Railway.

(iii) A valid ticket holder is a consumer of Railways:

Shri G.S. Ratna Kumar, CLA/P/BZA presented judgement dated 12th October, 2017 of the State Consumer Disputes Redressal Forum, Chandigarh in SA No.255/2017 in the matter of Jatinder Saxena Vs. UOI (rep. By GM/Northern Railway). The issue involved is the wife of the applicant while travelling in the lower berth of General Coach of Shalimar Express inflicted and succumbed to a cervical injury due to collapse of middle berth and falling of a passenger.

On the complaint of the applicant, a compensation of Rs.8,70,000/- has been awarded by the District Forum. Both the applicant and respondent approached State Commission for enhancement of the award and dismissal of the award respectively. The State Commission referring to a decision of The National Commission in the matter of Vinay Vilas Sawant Vs. UOI 2008(CPJ) -13 that after purchase of a valid ticket, a passenger would be a consumer as he avails the services of Railways. Further, the State Forum also observed that the principle of res lipsa iquitor fully applicable in this case as railways failed to keep its coach properly maintained which resulted in the accident and death of the passenger. Thus, the State Commission confirmed the award of the District forum.

(Iv) Courts cannot interfere in terms and conditions of the contract:
Shri A. Bhagwat Prasad,CLA/G/SC presented the judgement of Hon'ble Supreme Court dated 20.02.2009 in CA No.1127 OF 2009 (Arising out of SLP (C) No. 111 of 2009) in the matter of M/s Sorath Builders Vs. Shreejikrupa Buildcon Limited & ANR. The issue in the matter is that the tender submitted by M/s Shrijikrupa Buildcon Ltd. has been rejected on the ground that they failed to submit the pre-qualification tender documents within the stipulated time. Aggrieved by this, they approached High Court Division bench, which allowed the OA.

M/s. Sorath Builders, contested the Judgement of the High Court. While allowing the appeal filed, the Supreme Court referred to one of its own previous judgement in Puravankara Projects Ltd. vs. Hotel Venus International and Others, reported in (2007) 10 SCC 33 wherein it was held that tender terms are contractual and it is the privilege of the Government which invites its tenders and Courts do not have jurisdiction to judge as to how the tender terms should be framed. The statutory parameters have to be kept in view and the High Court can never alter or amend a contract entered into between the parties. Thus, Supreme Court allowed the appeal setting aside the judgement of the Divisional Bench upholding the decision of the University in awarding the contract in favour of M/s. Sorath Builders. [(2009) 11 SCC 9]

(v) Whether Right to First Refusal can be claimed without participating in the bidding process?
Shri S. Srinivas, CLA/GNT has presented the judgement of the Hon'ble Supreme Court dated 13th July, 2018 in CA No.3288 of 2018 in the matter between National Highways Authority of India Vs M/s Gwalior Jhansi Expressway Ltd. In the appeal, respondent contended that no interference in this appeal is warranted in view of the concurrent view taken by the Arbitral Tribunal as well as the High Court that it was not necessary for the respondent to participate in the tender process to exercise ROFR. For, the order dated 23rd July, 2016 does not prescribe such a pre- condition nor does it prohibit the respondent from exercising the ROFR without participation in the bidding process.

The Hon'ble Supreme Court while quashing and setting aside the award of the Arbitral Tribunal dated 24th May, 2017 and order of the High Court dated 21st August, 2017, observed that the High Court overlooked the fact that the tender process was not an empty formality and with the initiation of the same, third parties, who participated in the bidding process, were likely to be prejudiced by allowing the respondent to match the lowest bid or exercise ROFR, without participating in the

bidding process despite the express stipulation in that behalf in the tender documents.

(vi) Bona-fide mistake does not confer any right on any party and it can be corrected:
Shri G. Kumar Kotappa, CLA/GTL presented the judgement dated 11.03.2019 delivered by the Hon'ble CAT/HYB in OA No.20/419/2017 in the matter of Shri S. Guruswamy, Rtd. Tech./Gooty Vs. Union of India. The issue relates to deduction of leave account unilaterally by the respondent. The leave balance of the applicant which was previously shown wrongly as 190 due to double entry and totalling mistakes has been corrected and after deducting the excess credit, leave salary of 135 days has been paid to the respondent. The Hon'ble Tribunal dismissed the OA relying on the judgement of the Hon'ble Supreme Court in VSNL Vs. Ajit Kumar Kr. [(2008)11 SCC 591] wherein it was held that bona fide mistake does not confer any right on any party and it can be corrected.

(vii) Flexibility in the time frame fixed under the Rule for recording PAR is not a water tight compartment:
Shri S. Venkateswarlu, CLA/Engg has presented the judgement dated 18th March, 2019 of the Hon'ble High Court of Punjab & Haryana in CWP No.317/2019 in the matter of Dr. Ashok Khemka Vs. State of Haryana & Ors.

The Hon'ble High Court has observed that an officer with such integrity many a time has to face adverse circumstances which have been mentioned by the Reviewing Authority as 'constraints'. Since number of such officers whose integrity is beyond doubt and who have professional integrity need protection from being damaged by recording adverse remarks against the record.

The Hon'ble High Court set aside the order of the Tribunal by expunging the remarks and grading of 9.00 given by the Accepting Authority and the grading of 9.92 given by the Reviewing Authority is also restored.

(ix) Principle of res judicata applies to Labour Courts and Industrial Tribunals also:
Shri V. Apparao, CLA/HQ presented judgement dated 11th April, 2019 delivered by the Apex Court in C.A. Nos. 3803/2018 & 3804/2018 arising out of SLP (C) Nos. 99/2018 & 100/2019 in the matter of CMD, The Fertilizers And Chemicals Travancore Ltd. & Anr. Vs. General Secretary FACT Employees Association & Ors.

The Supreme Court, while dwelling on the issue that when the issue referred by the State in reference was already decided by the High Court between the parties in the writ petitions, writ appeals and lastly in SLPs by this Court in the earlier round of litigation, whether the State had the jurisdiction to refer the same issue to the Labour Court in reference under Section 10 of the Industrial Disputes Act, 1947 for its fresh adjudication.

The Supreme Court observed that the High Court was not justified in setting aside the awards of the Labour Court, which had rightly held that it (Labour Court) had no jurisdiction to entertain the reference and nor it had the jurisdiction to answer it on merits. The Supreme Court reiterated that the principle of Res Juidcata defined

in Section 11 of the Code of Civil Procedure Code also applies to the labour/industrial proceedings.

(x) Transfer is an incidence of service :
Shri S. Nagender/CLA/HYB presented the judgement dated 12th April, 2019 of the Central Administrative Tribunal, Hyderabad Bench in OA No.021/002212019 in the matter of Yogeswar Mena Vs. Union of India.

The applicant in the OA challenged the transfer order issued by the respondent on administrative grounds alleging that the same was issued on mala fide intention. The respondent submitted that the transfer was issued on administrative grounds as the applicant is creating problems in a sensitive Station.

Dismissing the OA, the Tribunal observed that hardly an employer needs to prove the order of transfer with the support of any material. Transfer is always an incidence of service and in case of administrative transfer, guidelines are not relevant. The decision formed by an employer that it is not desirable to continue an employee at a particular station, cannot be interfered by Courts. The Tribunal also referred to Apex Court's Judgement in Sergeant JK Vs. UOI & Anr. reported in 2003 (4) SLD 797 & 2004 (1) SLT 563.

(x) Standard of proof required in a domestic enquiry is preponderance of probabilities and that in criminal case the standard of proof required is beyond reasonable doubt:
Shri E. Satyanarayana, CLA/HQ presented the judgement dated 11th September, 2018 in OA No.021/00480/2017 in the matter between J. Sreenivasa Rao Vs. Union of India. The applicant pleaded that the disciplinary proceedings against him for illegal gratification may be quashed as he has been acquitted by the CBI Court and the allegations in both the criminal case and disciplinary proceedings are the same and overall documentary evidence relied against him in both the proceedings are also the same.

The Tribunal held that the standard of proof required in a domestic enquiry is preponderance of probabilities and that in criminal case the standard of proof required is beyond reasonable doubt and dismissed the OA observing that the departmental proceedings cannot be quashed simply because the applicant has been acquitted in the criminal case in question.

Subsequently, the applicant filed WP No. 36331/2018 in the High Court of Hyderabad against the Tribunal's orders which has been dismissed vide judgement dated 14th June, 2019. The High Court relying on the judgement of Hon'ble Supreme Court in CA No.7133/2008 in the matter of Union of India& Anr Vs. Purushottam [(2015(3)SCC779 held that the burden of proof is distinct in criminal trial and departmental proceedings.

(xi) The party who propounds the document will have to prove it:
Ms. Vijitha, CLA/Gaz/HQ presented a judgement dated 19 February, 2008 delivered by the Supreme Court in the matter of Thiruvengada Pillai vs Navaneethammal & Anr. (AIR 2008 SC1541)

The plaintiffs in the OS approached court alleging that the first defendant had executed an agreement of sale in favour. The Supreme Court observed that since the first defendant denied it, the burden was on the plaintiff to prove that the first defendant had executed the agreement and not on the first defendant to prove the negative. The Supreme Court while dwelling on the issue of validity of stamp papers stated that The Indian Stamp Act, 1899 nowhere prescribes any expiry date for use of a stamp paper. Section 54 does not require the person who has purchased a stamp paper, to use it within six months. Section 54 merely provides that a person can seek refund of the value thereof by surrendering unused stamp paper to the Collector provided it was purchased within the period of six months.

The Supreme Court also observed that the observation of the High Court without the benefit of any expert opinion, merely on a casual perusal, that there appeared to be no marked differences between the two thumb impressions, and therefore the sale agreement must have been executed by first defendant, was unsound. [AIR 2008 SC 1541]

Next meeting of Law Officers and Chief Law Assistants will be held on 12th July 2019. 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.

26/6/19

(N. Murali Krishna)
Sr. Law Officer

G.265/V/IV/Misc./Meeting/2019 Date: 26.06.2019

To:
SDGM - for kind information

All ADRMs, CCO/SC, PCPO/Hqrs,

LO/P/Hqrs, LO/BZA,
LO/SC

All CLAs