

**MINUTES OF THE COURT CASES MEETING HELD WITH LAW OFFICERS
AND CHIEF LAW ASSISTANTS ON 26th July 2019**

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

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

No orders to be passed to encourage Persons facing corruption allegations: Shri G. Kumar Kotappa, CLA/GTL presented judgement dated 7th June, 2019 delivered by the Hon'ble CAT in OA No.1253/2016 in the matter of A. Satyanarayana Vs. UOI & Ors. While working as Superintendent at Nandyal, GTL Division, the applicant was caught red handed in a trap by CBI. On a suggestion by Vigilance wing, the applicant has been transferred to NED. Aggrieved by the action of administration, the applicant approached CAT/HYB. CAT/HYB while disposing of the OA, reminded that time and again the Hon'ble Supreme Court of India has been cautioning the courts and tribunals that no orders are passed to encourage persons facing corruption charges. The CAT/HYB further held that the applicant may make a representation for transfer him back to GTL Division which may be considered by the administration, provided he carries out his transfer orders to join NED division.

Acquittal in criminal case is not a ground for setting aside the penalty imposed in the course of disciplinary proceedings: Ms. Vijitha, CLA/Gaz. has presented a judgement dated 11th July 2019 delivered by the Hon'ble Supreme Court of India in CA 6183/2010 in the matter of Union of India & Ors. Vs. Sitaram Mishra & Anr. The first respondent Shri Sitaram Mishra, Head Constable while cleaning the barrel of a carbine resulted in the death of his co Constable. The disciplinary proceedings against the respondent were culminated in the removal of the employee whereas in the criminal proceedings, he was acquitted.

The Supreme Court observed that in a criminal trial the burden lies on the prosecution to establish the charge beyond doubt. The purpose of disciplinary proceedings is to enable the employer to determine whether the employee has committed a breach of service rules. The Supreme Court, observed that High

Court can interfere if a disciplinary finding is based on no evidence. But in the present case, none of the facts were disputed and punishment is not disproportionate to the misconduct proved. The Supreme Court, thus, holding that acquittal in criminal case is not a ground for setting aside the penalty imposed in the course of disciplinary proceedings and allowed the appeal by the defendant.

Whether a candidate availing age relaxation in a selection can thereafter seek to be accommodated in/or migrated to general category? Shri S.Venkateswarlu, CLA/Engg. has presented judgement dated 4th July, 2019 delivered by the Supreme Court in CA No.5185/2019 arising out of SLP (C) No.3938 of 2018 in the matter of Niravkumar Dilipbhai Makwana vs Gujarat Public Service Commission.

The appellant submitted his application under Socially and Economically Backward Classes quota availing age relaxation provided for that category. The appellant wanted to be considered under general merit quota instead of SEBC, which has not been agreed to by GPSC.

The Supreme Court dismissed the appeal filed by Shri N.D. Makwana stating that it is evident from the advertisement of GPSC that a person who avails of an age relaxation at the initial stage will necessarily avail of the same relaxation even at the final stage.

Sr.Law Officer clarified that every State Government has its own rules with regard to relaxations applicable to particular category and in the instant case, as per Gujarat State Government rules, all those candidates belonging to a reserved category, if they avail the benefit of age relaxation, the same is to be considered as relaxation in the standard and therefore such candidates who got the benefit of age relaxation are not entitled to be considered in general category and their cases are required to be considered for reserved category only and these rules vary from State to State.

Whether departmental proceedings and proceedings in a criminal case launched on the basis of the same set of facts can be continued simultaneously

Shri Amjad Ali, OS/Law Section presented the judgement dated 30th March, 1999 of Supreme Court in the matter of Capt. Paul Anthony Vs. Bharat Coal Mines [(1999)3 SCC 679].

In this case, Supreme Court observed that where the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable

An appeal under order 43 Rule (1) clause (u) is not entitled to agitate questions of facts.: Shri Debashish Patnaik, CLA/CCO has presented judgement dated 16th March 2004 delivered by the Supreme Court in CA No.820-821 of 1999 in the matter of Narayanan Vs. Kumaran [(2004) 4 SCC 26]. The case came up before the High Court is as to whether an appeal under order 43 Rule (1) clause (u) of CPC should be heard only on the grounds under Section 100. The Supreme Court held that appellant in an appeal under order 43 Rule (1) clause (u) is not entitled to agitate questions of facts.

Non-joinder of necessary parties: Shri Nagender, CLA presented the judgement of the Supreme Court dated 18th July 2019 in CA no.20108 of 2010 in matter of Radhy Shyam Pandey Vs. Kanpur Development Authority.

The applicant appointed as Clerk Gr.III and worked as a stenographer in Kanpur Development Authority between 01.01.1976 and 30.11.1987 but he was paid salary only as clerk. When the appellant made the representation to pay his arrears and allowances as the stenographer, the same was not considered. Applicant approached U.P. Public Service Tribunal No.II and the Tribunal, vide Order dated 13.11.1991 allowed the application and directed the authorities to pay him arrears of salary as payable to stenographer. Aggrieved by the order of the UPPST II, the Kanpur Development Authority preferred writ petition before the High Court. The High Court observed that services of the appellant was centralised one and the State of Uttar Pradesh was the appointing authority. The High Court while pointing out that the State Government being necessary party is not impleaded, set aside the order of the Tribunal. On appeal, the Supreme Court remitted the matter back to High Court ordering the State of Uttar Pradesh to be impleaded as the third respondent for consideration of the matter afresh.

Sr.Law Officer advised that it is to be particularly ensured in land cases where necessary parties are not included. General Manager needs to be made a necessary party in cases where the matter pertains to railway land.

Next meeting is proposed to be held on 26th August, 2019. All the members are requested to come prepared to the CLA's meeting and present atleast 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

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

Date: 13.08.2019

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