

**PROCEEDINGS OF THE COURT CASES MEETING HELD WITH
LAW OFFICERS AND CHIEF LAW ASSISTANTS ON 16th September 2019**

Shri N. Murali Krishna, Sr. LO
Shri I.V.V.R.P. Prasad, LO/Hqrs
Shri M.V. Ramana, LO/BZA
Shri K. Phani Raj, ACM/M&D

Shri K. Gopinath, CLA/Hqrs
Shri M.K. Shaji, CLA/Hqrs
Shri V. Apparao, CLA/HQ
Shri S. Venkateswarlu, CLA/Engg/HQ
Shri Debhashish Pattnaik, CLA/CCO
Shri A. Bhagwat Prasad, CLA/G/SC
Shri Syed Amjad Ali, OS/Law

Sr Law Officer, while welcoming the Law Officers and Chief Law Assistants to the meeting, informed that the Arbitration and Conciliation (Amendment) Act, 2019 has been published vide gazette dated 9th July 2019 amending certain important provisions of the Arbitration and Conciliation Act, 1996. Similarly, Consumer Protection Bill 2019 has been passed by the Lok Sabha on 30th July 2019 and this bill replaces the Consumer Protection Act, 1986 with drastic changes with regard to definition of consumer etc. Further, the General Code of Conduct has also been modified and has already been published on the Indian Railways website. One of the major improvements in the modified General Code of Conduct 2019 is that now Joint Ventures can now be registered under Partnership Act also, and this will be applicable to future tenders. These factors need to be kept into mind while rendering legal opinions and contesting the cases.

Extension of benefits of Railway Service Pension Rules 1993 to an employee appointed after 01.01.2014 – Shri K. Gopinath, CLA/HQ presented a judgment of the CAT Calcutta Bench in OA No.350/200/2014 in the matter of Sumit Chatterjee Vs. Union of India & 7 Ors. The Tribunal relied on the judgement wherein the Supreme Court held that “The cut-off date is a domain of the employer and so the introduction of new scheme of pension will be done considering all the relevant factors including financial viability of the same”. The Tribunal stated that applicant had accepted the conditions at the time of appointment and signed the same unconditionally, without raising any objection during the 18 months period of training and passing the same before being absorbed in a working post. Dismissing the OA, the Tribunal contended that the argument that delay was on the part of the respondents does not hold good as the candidate was low in the merit list and hence he was placed in the second list of candidates since many candidates failed in the medical examination.

Under Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987 – Whether an applicant can implead himself as co-applicant in an existing OA: Shri M.K. Shaji presented the judgement of the Hon'ble Principal Bench, Central Administrative Tribunal in M.A. No.545/2013 in the matter of Shri Rajinder Kumar Vs. Union of India. - This Miscellaneous Application has been filed by Shri Rajinder Kumar requesting to permit him to implead himself as co-applicant in an existing Original Application No.4065/2005 filed by Shri Shubhash Kumar. The Tribunal dismissing the MA held that Rule 24 of the CAT (Procedure) Rules, 1987 is invoked by this Tribunal only to make such orders or directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice.

Year of allotment should be the determining factor/ criteria for determining the inter-se-seniority : Shri S. Venkateswarlu, CLA/Engg has presented the judgement of the Supreme Court in 2018 CA No. 9176 of 2018 arising out of SLP No. 22444/2017 in the matter of Shri Prabhat Ranjan Singh vs R.K. Kushwaha. Dismissing the contempt petition filed by the direct recruit Mr. R.K. Kushwaha, the Apex Court upheld the Tribunal's order stating that the Tribunal in its order only directed that instead of 'DITS', the 'year of allotment' should be the determining factor/ criteria for determining the inter se seniority and further held that there was no challenge to IREC Rules that entitles backdating of seniority by 5 years to promote officers.

Clause 19 of the Addendum to the Supplementary Development Agreement shall be squarely applicable : Shri A. Bhagvat Prasad, CLA/G/SC has presented the Apex Court's judgement dated 6th September 2019 in CA Nos. 70477049 of 2019 arising out of SLP (Civil) Nos. 42134215 of 2019 in the matter of M/S Avinash Hitech City 2 Society vs Boddu Manikya Malini. The Apex Court opined that Clause 19 of the Addendum to the Supplementary Development Agreement shall be squarely applicable and therefore the disputes between the respondents and the appellants for which the respondents initiated proceedings under the Societies Registration Act, are required to be referred to the Arbitration and/or to the Arbitral Tribunal. Thus, the Apex Court setting aside the order of the High Court, allowed the applications submitted by the appellants under Section 8 of the Arbitration and Conciliation Act, 1996 to be referred to the Arbitration.

Application of Clause (b) of the second proviso to Article 311(2) of the Constitution of India: Shri V. Apparao, CLA/HQ presented the judgement dated 13th May 2014 of the Supreme Court in Civil Appeal No.2839 of 2011 in the matter of Risal Singh Vs. State of Haryana and Ors. Shri Risal Singh an ASI while working in Haryana State Police, caught red handed in a TV sting operation and has been dismissed from service by Superintendent of Police in exercise of the powers conferred under Article 311(2)(b) of Constitution of India. The Supreme Court relying on one of its own judgements wherein it is stated that "Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry". Observing that in the instant case since there was no occasion to come to the conclusion for the Disciplinary Authority that inquiry was not possible, the Apex Court allowed the appeal and set aside the order passed by the High Court and that of the disciplinary authority.

Next Meeting will be held on 25th October, 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 at least 2 days in advance.


(N. Murali Krishna)
Sr. Law Officer

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

Date: 26.09.2019

To

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