

**MINUTES OF THE COURT CASES MEETING HELD WITH LAW OFFICERS
AND CHIEF LAW ASSISTANTS ON 17th April 2019**

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

Shri K. Gopinath, CLA/Hqrs
Shri M.K. Shaji, CLA/Hqrs
Shri V. Apparao, CLA/HQ
E. Satyanarayana, CLA/PCPO/HQ
Shri A. Bhagwat Prasad, CLA/G/SC
Shri D.R.V.S.S.N. Raju, CLA/G/BZA
Sri G.S.Ratna Kumar, CLA/P/BZA
Shri S. Nagender, CLA/HYB
Shri Amjad Ali, OS/Law

Summoning of Higher Officials : Shri D.R.V.S.S.N. Raju, CLA/BZA presented a judgement dated 10.04.2019 delivered by the Hon'ble Supreme Court in CA No.3740/2019 in the matter of Shri N.K. Janu, Dy.Director, Social Forestry Division, Agra & Ors. Vs. Lakshmi Chandra. While holding the entire proceedings in Contempt Application No.1632 of 2009 as wholly unjustified and in excess of jurisdiction vested with the contempt court, the Apex Court observed that in general, officers pass orders as custodian of public money and merely passing an order does not warrant the personal presence of the official. The court further observed that summoning of officials to court to attend the proceedings impinges upon the functioning of officers and eventually public at large will suffer on account of their absence from the duties assigned to them. In view of separation of powers of the Executive and Judiciary, the practice of summoning officers to courts is not proper and does not serve the purpose of administration of justice.

Disciplinary proceedings stand abated upon the death of the employee: Shri Shaji M.K., CLA/HQrs presented the judgement of the Hon'ble High Court of AP in WP No.1438 of 2004 in the matter of Government of Andhra Pradesh Revenue Department Vs. Smt. M. Veeramma.

Based on the inquiry report against the husband of the respondent, a show cause notice was issued to the employee proposing stoppage of 2 annual increments besides recovery of loss caused by him. Before issuing any final order in the disciplinary proceedings, the employee died. While taking note of the death of the employee, the department issued GO stating that the disciplinary action against the deceased shall be treated as abated, it has directed that the loss caused by the deceased to the Temples be recovered from the death-cum-retirement gratuity (DCRG) and settle all the pensionary benefits to his family.

The Hon'ble High Court while disposing the WP agreed with the view taken by the Tribunal and stated that once the disciplinary proceedings have abated, recovery also gets abated. Before the disciplinary proceedings were brought to its logical end, the delinquent died. Had he been alive, there would have been a possibility of his convincing the disciplinary authority to drop further action by submitting his explanation. Such an opportunity was lost with the death of the delinquent. It is precisely for this reason that the death of a delinquent before the conclusion of disciplinary proceedings would bring in the abatement of the disciplinary

proceedings. Once the proceedings get abated, every aspect connected therewith will cease to exist in law.

The High Court further stated that the department has failed to notice FR.54-B (2) which reads as under:

F.R. 54-B: (2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

Scrutiny of tenders in Writ Proceedings under Article 226 – Attempt to disqualify the successful parties, on abysmal ground : Shri A. Bhagwat Prasad, CLA/G/SC presented the judgement dated 09.04.2019 of the Hon'ble Supreme Court in CA No.33588 of 2019 arising out of SLP(C) No.46 of 2019 in the matter between Caretel Infotech Ltd. Vs. HPCL.

The issue lies in that one of the tender conditions include that the bidders have to submit a declaration to the effect that they have not been banned or black listed or delisted or holiday listed by any government or quasi government agencies or public sector undertakings. Whereas M/s Caretel Infotech Ltd. were issued a show cause notice for blacklisting the firm in respect of another tender floated by Department of Agriculture, Government of India but was neither barred nor blacklisted. WP filed by the respondent No.3 who is L2 bidder for contesting the declaration of M/s. Caretel Infotech as L1. The High Court held that the non-disclosure of the factum of the show cause notice issued to the appellant amounts to violation of the undertaking.

The Hon'ble Supreme Court of India set aside the impugned order and dismissed the WP. The Apex Court held that in the current day and age, making of contracts is a matter of high technical expertise with legal brains from all sides involved in the process of drafting a contract. Thus, normally a contract should be read as it reads, as per its express terms. The Apex Court further cautioned that the object cannot be that in every contract, where some parties would lose out, they should get opportunity to somehow pick holes, to disqualify the successful parties, on grounds on which even the party floating the tender finds no merit.

Law Officer pointed out that tender issuing authority in his wisdom includes particular clause which is known to the tendering authority. It is not for the courts to interpret the clauses, it is the lookout of the tender issuing authority. In this judgement, the Supreme Court expressed its anguish over the High Courts' interference in tenders under Article 226.

Information of Commercial Confidence under RTI : Shri S. Nagender, CLA/HYB presented the Decision of CIC dated 14.11.2008 in Case No. CIC/WB/A/2007/00830/SG/ 1286 in Appeal No. CIC/WB/A/2007/00830 City Development Plan, JnNURM. The issue lies in that certain information sought by the

appellant Shri G.D. Varma has been denied by Additional Secretary (UD) Govt. of NCT Delhi on the ground that the information sought comes under commercial confidence and cannot be divulged. The Respondent claimed exemption under section 8 (1) (d) on the following grounds. Section 8 (1) (d)

However, the Chief Commissioner while allowing the appeal held that the claim of 'commercial confidence' in denying access to agreements between private parties and the masters of the Public authorities, - Citizens, - runs counter to the principles of the Right to Information and once tender is finalized and agreement is entered into, tender committee proceedings are to be furnished to the applicant.

Payment of back wages for the period not in service : Shri E. Satyanarayana, CLA/P/HQ presented the judgement of the Hon'ble Supreme Court dated 1st April, 2019 in CA No.3339 of 2019 in the matter of Raj Narain Vs. Union of India.

The appellant was placed under suspension on 23.10.1979 on allegations of forged payments of high value money orders and order of suspension revoked on 21.10.1987. He was dismissed from service in view of his conviction on 28.02.1987. The criminal appeal filed by the appellant was allowed and he was acquitted of the charges on 31.08.2001. The request of the appellant for reinstatement was refused on 13.06.2002. On appeal, the High Court held that the Appellant shall be entitled to full back wages from the date of the order of his acquittal i.e. 31.08.2001 till the date of his reinstatement i.e. 20.01.2003.

The Appellant approached Supreme Court for payment of full bak wages. The Apex Court observed that the Appellant was placed under suspension on 23.10.1979 and his suspension was revoked on 21.10.1987. During the interregnum the disciplinary proceedings were dropped on 21.03.1983. By virtue of the disciplinary proceedings being dropped, the Appellant becomes entitled to claim full salary for the period from the date of his suspension till the date of closure of the departmental inquiry. Thereafter, the Respondents took four years to reinstate him by revoking his suspension. The order of suspension dated 23.10.1979 came to an end on 21.03.1983 which is the date on which disciplinary proceedings were dropped.

Thus, the Supreme Court disposed of the appeal holding that the Appellant shall be entitled for back wages from the date of acquittal on 31.08.2001, till the date of his reinstatement on 20.01.2003 and also to full salary from 23.10.1979 to 21.10.1987.

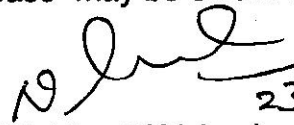
Preponderance of probabilities is sufficient to establish guilt : Shri V. Apparao, CLA/HQ presented the judgement of the Hon'ble Supreme Court of India dated 28.11.2003 in CA No.29808 of 2010 in the matter of State of West Bengal & Ors. Vs. Sankar Ghosh.

The respondent was working as Sepoy in Kolkata Armed Police. While on deputation in the Traffic Department of Kolkata Police, for his complicity in a dacoity using a motor cycle, he was placed under suspension. Later, the Sessions Judge

trying the Criminal Case held that the charges levelled against the accused were not found proved vide judgment dated 7.12.2007.

However, the simultaneous departmental disciplinary proceedings culminated in dismissal of the employee and appeal was also rejected. CAT, West Bengal allowed the appeal filed by the employee and disposed of with a direction to the Disciplinary Authority to reinstate the respondent in view of the acquittal order passed by the Sessions Court in the criminal case. The High Court dismissed the appeal upholding the order of the Tribunal, against which an appeal has been preferred. The Hon'ble Supreme Court allowing the appeal filed by the State of West Bengal held that Regulation 4 of Chapter 19 of the Police Regulations of Calcutta, 1968 specifically provides that acquittal or discharge in a criminal proceeding shall not be a bar to award punishment in a departmental proceeding in respect of the same cause or matter. Sr. Law Officer stated that it is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient.

Next Meeting will be held on 10th May, 2019. All the members are requested to come prepared to present at least one case. Brief of the case may be emailed to loscrhq@gmail.com at least 2 days in advance.


23/4/19
(N. Murali Krishna)
Sr. Law Officer

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

Date: 23.04.2019

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