

कार्यालय रक्षा लेखा महानियंत्रक/ Office of Controller General of Defence Accounts

उलान बटार रोड़, पालम, दिल्ली छावनी / Ulan Batar Road, Palam, Delhi Cantt - 110 010.

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No. LC/3024/Court Case/Misc/40

Date 02.6.2017

To

All PCsDA/PCsA/PIFA/CsDA/CsFA

(Through Website)

Subject: - Instruction regarding handling of Court cases.

Please find enclosed herewith a copy of DO letter dated 9.5.2016 received from the ASG, Punjab & Haryana High Court and Member Law Commission of India along with copies of Min. of Law & Justice, Dept. of Legal Affairs OM No. J-18/1/2016-JUDICIAL dated 06.09.2016 & 19.4.2016 for information and necessary action.

2 In addition to above, please also find enclosed herewith a copy each of the Cabinet Secretary DO No. 403/1/5/2016-CA-V dated 25.11.2016, Min. of Law & Justice, Dept. of Legal Affairs OM No. F29(6)/2015-judl dated 8.5.2015 and Dept of Expenditure, Min. of Finance OM No. 7(8)/2012-E-III(A) dated 16.5.2012 for information and compliance. All the CAT/Court cases may kindly be monitored closely and timelines prescribed for filing replies may be adhered to.



(Mustaq Ahmad)
Dy. CGDA(AN)

Copy to:

- 1 All Admin section/AT – Legal in HQrs Office
- 2 O i/c , EDP

- : For similar action.
- : For uploading on website.



(Mustaq Ahmad)
Dy. CGDA(AN)

Satya Pal Jain

Ex-MP & Senior Advocate

Addl. Solicitor General of India
Member, Law Commission of India



सत्यमेव जयते

RESIDENCE: 'Bala Niwas', Kothi No. 2224
Sector 15-C, Chandigarh - 160015
Tele- (0172) 2772232, Fax- 4632232

CHAMBER: 33, Lawyers' Chambers
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FACEBOOK: www.facebook.com/satyapaljain

TWITTER: @SatyaPalJain

Ref. No.: _____

Dated: 09-05-2017

To

Shri S. K. Kohli
Secretary
Department of Defence Finance
Ministry of Defence
Government of India
139, South Block
New Delhi

*JK for Legal Advisor
to Section 139/15*

*15/5
RK - On leave
Legal Advisor, (RD)*

Dear Sir,

It is to inform you that the Government of India has been issuing instructions from time to time about the handling of Court cases by the Law Officers as well as the Panel Counsels.

Recently, vide its Circular No. F. No. J-18/1/2016-JUDICIAL dated 6th September 2016 (which is in continuation of its earlier Circular No. F. No. J-18/1/2016-Judl. dated 19th April 2016), the Government of India has decided that "wherever there is no Branch Secretariat, it is the Additional Solicitor General of India who will be overall In-charge of the litigation and is required to allocate cases to the Government Counsels ensuring that there is proper and fair distribution of cases. He is also required to maintain records of the cases distributed and forward a status statement to the Main Secretariat to enable compilation of statistics in this regard". Copies of both these circulars are enclosed, herewith.

As you are aware, there is no Branch Secretariat in Chandigarh. Therefore, the Additional Solicitor General of India is entrusted with the job of assigning Government of India cases to Panel Lawyers in the Punjab & Haryana High Court and is responsible for the smooth functioning of the same.

I would request you to kindly note down the contents of both these Circulars and ensure strict compliance of the same. In future, kindly get all your cases of the Punjab & Haryana High Court marked from the office of the Additional Solicitor General of India, Chandigarh.

*14/11/17 Addl. SA (RK) JSS
15/5/17*

*538/FNC
15/5
1029/C/17
15/5*

RK

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Satya Pal Jain

Ex-MP & Senior Advocate

Addl. Solicitor General of India
Member, Law Commission of India



सत्यमेव जयते

- 2 -

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Ref. No.: _____

Dated: _____

I would also request you to kindly circulate both these Circulars to the officers handling legal matters in your Ministry/Department, especially to those offices of your Ministry/Department which are situated in Punjab, Haryana or Chandigarh.

Kindly also direct the officers handling legal matters in your Ministry/Department to send a list of all the pending cases of your Department in the Punjab and Haryana High Court to the office of the Additional Solicitor General of India, with the name of the advocates who are currently handling those cases, the current status of the cases and the next date of hearing.

If any intimation/notice in any case is received by you, kindly intimate it to the office of the Additional Solicitor General of India so that it can be assigned to an appropriate Government Counsel for conducting the same on behalf of your Department/Ministry.

In case you need any further information or clarification, you can contact the office of the Additional Solicitor General of India.

Thanking You
&
With Regards,

Yours Sincerely,

(Rakesh Kumar)

Personal Assistant
to Sh. Satya Pal Jain

Additional Solicitor General of India
Punjab & Haryana High Court
Chandigarh

F. No. J-18/1/2016-JUDICIAL
Government of India
Ministry of Law & Justice
Department of Legal Affairs
Judicial Section

Shastri Bhawan, New Delhi,
Dated 6th September 2016

OFFICE MEMORANDUM

Instructions have been issued from time to time by this Ministry with regard to handling of court cases by the Law Officers as well as the Panel Counsel.

2. Recently this Ministry issued an OM of even number dated 19.04.2016 regarding allocation of cases to the panel counsel before the various High Courts wherein it was reiterated that wherever there is a Branch Secretariat of this Ministry i.e. Mumbai, Kolkata, Chennai & Bengaluru, cases are to be allocated to the Panel Counsel by the In-charge Branch Secretariat of the Ministry. However, in respect of important cases, the In-charge of the Branch Secretariats are advised to consult the Additional Solicitor General for proper defence of the cases.

3. It was also stated that wherever there is no Branch Secretariat, it is the Additional Solicitor General of India, who will be over all In-charge of the litigation and is required to allocate cases to the Government Counsel ensuring that there is proper & fair distribution of cases. He is also required to maintain records of the cases distributed and forward a status statement to the Main Secretariat to enable compilation of statistics in this regard.

4. In continuation of the above mentioned OM, It is also clarified that the Additional Solicitors General will be the over all In-charge of the litigation & allocate the cases amongst the Panel Counsel for the High Court Bench only where he is sitting. For rest of the High Courts and Benches, concerned Assistant Solicitors General/In-charge will allocate cases amongst Panel Counsel of that Bench of the High Court.

.....continue on page 2

5. While allocating the cases equal distribution in a fair & transparent manner be also ensured.

6. A monthly report regarding distribution/allocation of cases amongst the Panel Counsel highlighting the important/high financial stake in the cases, may be sent in the first week of the following month.

7. This should be strictly adhered to.


(SURESH CHANDRA)
LAW SECRETARY

To,

1. The In-charge Central Agency Section.
2. The In-charge Litigation (High Court) Section, CAT (PB) New Delhi, Lower Court Section.
3. The In-charge, Branch Secretariats Bengaluru, Mumbai, Kolkata and Chennai.
4. The Additional Solicitors General in High Court of Rajasthan at Jaipur, Allahabad, Punjab & Haryana at Chandigarh, Patna & Addl. SG Southern Zone.
5. The Assistant Solicitors General of All High Courts other than High Court of Rajasthan at Jaipur, Allahabad, Punjab & Haryana at Chandigarh, Patna.

F.No. J-18/1/2016-Judl.
Government of India
Ministry of Law & Justice
Department of Legal Affairs

Shastri Bhawan, New Delhi
19th April, 2016

OFFICE MEMORANDUM

Instructions have been issued from time to time by this Ministry with regard to handling of court cases by the Law Officers as well as the Panel Counsels.

The Ministry has appointed Addl. Solicitor General in the recent past in the High Court of Punjab and Haryana at Chandigarh, High Court of Rajasthan at Jaipur, High Court of Karnataka at Bangalore. Certain instances have been brought to the notice of the Ministry where allocation of the cases have not been done as per the instructions issued in this regard. It is reiterated that wherever there is a Branch Secretariat of this Ministry of Law and Justice, i.e. Mumbai, Kolkata, Chennai and Bangalore, cases are to be allocated to the Panel Counsels by the In-Charge Branch Secretariat of the Ministry. However, in respect of important cases, the In-Charge of the Branch Secretariats are advised to consult the Addl. Solicitor General for proper defence of the cases.


Wherever there is no Branch Secretariat, it is the Addl. Solicitor General of India, who will be over all In-Charge of the litigation and is required to allocate cases to the Government Counsels ensuring that there is proper distribution of cases. He is also required to maintain records of the cases distributed and forward a statement to the Main Secretariat to enable compilation of statistics in this regard.

In so far as Karnataka is concerned, there are two Addl. Solicitors General, one for the Karnataka High Court at Bangalore and other for the Southern Zone i.e. for the High Courts of Andhra Pradesh and Kerala. Each of them is responsible for handling litigation matters in respect of their jurisdiction only.

In respect of High Courts, where no Addl. Solicitor General has been appointed, it is the Assistant Solicitor General, who is responsible for equitable distribution of cases among the empanelled Counsels in courts. Assistant Solicitors General are also required to furnish monthly statement of the cases distributed among the Counsels.

Contd....2

Monthly statements about distributions of cases to Panel Counsels/Law Officers should be furnished to the Main Secretariat by 10th day of the following month.


(P.K. Malhotra)
Law Secretary

To

1. The Incharge, Central Agency Section.
2. The Incharge Litigation (High court) Section, CAT(PB) New Delhi, Lower Court Section.
3. The Incharge, Branch Secretariats Bangalore, Bombay, Chennai and Kolkata.
4. Additional Solicitors General of Rajasthan, Allahabad, Punjab & Haryana and Patna High Courts & Southern Zone.
5. Assistant Solicitors General of All High Courts other than Rajasthan, Allahabad, Punjab & Haryana and Patna.

संजय कुमार श्रीवास्तव
भारत सरकार के सचिव
Sanjay Kumar Srivastava
Secretary to Government of India



सत्यमेव जयते

मंत्रिमण्डल सचिवालय
राष्ट्रपति भवन, नई दिल्ली-110004
CABINET SECRETARIAT
RASHTRAPATI BHAWAN
NEW DELHI - 110004
November 25, 2016

D.O. No. 403/1/5/2016-CA.V

Dear Secretary,

It has come to notice that a number of Special Leave Petitions (SLPs), appeals, etc. are filed in the Supreme Court after expiry of the limitation period and in some cases after considerable delay. A meeting of the Committee of Secretaries (CoS) was held in this regard on 15.9.2016.

2. Amongst various issues discussed to streamline the process of filing SLP's, appeals etc, it was pointed out that the proposals to file SLP/Appeal before the Supreme Court are being received by the D/o Legal Affairs for advice from the concerned Ministry/Department when limitation period of 90 days is about to expire or sometimes even after expiry of limitation period. To address this issue, it has been decided to fix the following timelines for filing SLPs/appeal:

(i)	Examination and taking administrative decision by the Ministry/Department	15 days
(ii)	Examination and advice/opinion by the DoLA and Law Officers	15 days
(iii)	Drafting of SLPs and forwarding the same to the concerned Ministry/Department	15 days
(iv)	Approval of the draft SLP by the concerned Ministry/Departments and providing necessary documents	5 days
(v)	Preparing paper book and filing	10 days

3. For filing statutory appeals, reviews, etc. where limitation period is 60 days or 30 days, the above timelines may be reduced correspondingly. Proper coordination with D/o Legal Affairs (DoLA) and Central Agency Section (CAS) of the D/o Legal Affairs may be ensured to avoid such delays. The Nodal Officers in your Ministry/Department may be assigned the task of monitoring of these timelines and ensuring coordination in this regard.

4. You may instruct the concerned officers and PSUs/Boards/Authorities under the administrative control of your Ministry/Department to strictly follow the above timelines.

With regards,

Yours sincerely,

Sanjay Kumar Srivastava

(Sanjay Kumar Srivastava)

Shri Suresh Chandra
Secretary,
Deptt. of Legal Affairs
New Delhi

LS
24/02/2016

AS (LEGAL) | DLA (T)

2-11-16

14/11/16
ALA
15-11-16

New Delhi, 8th May, 2015

OFFICE MEMORADUM

Subject:- Deletion of the name of Cabinet Secretary from the array of respondents in Litigation/Court Cases - regarding

It has been brought to the notice of this Department that Cabinet Secretariat has been receiving a large number of cases from different Courts/Tribunals which would generally fall in either of the following categories in so far as enlisting of respondents is concerned:-

- (i) Union of India (UOI) through Cabinet Secretary is arrayed as a proforma respondent, with the Ministry/Department specifically concerned with the subject of the case having been made the main respondent;
 - ii) UOI through Cabinet Secretary is arrayed as the only respondent and the Ministry/Department concerned is NOT impleaded as a respondent;
 - (iii) UOI along with a Ministry/Department which is not in fact, concerned with the case, is arrayed as a respondent, resulting in the Notice for hearing being served to the Department which is not in a position to effectively defend the case on behalf of UOI, and
 - (iv) UOI along with a PSU/subordinate office under the Ministry/Department proper is impleaded as the respondent, resulting in failure/inability of the Ministry/Department proper to defend the case on behalf of UOI.
2. Cabinet Secretariat has been forwarding copies of the OA/WP/CP as the case may be, along with the Notice to the concerned Ministries/Departments with the request to defend the case on behalf of the Union of India and to get the name of Cabinet Secretary who is not directly concerned with the subject of the case, deleted from the list of respondents.

3. There have been instances where the Ministry/Department referred the proposal (i.e. for deletion of the name of Cabinet Secretary from the array of respondents) to the Government Counsel for his/her views. There has not been consistency in the views expressed by the Government Counsel. Some of them express the view that deletion of the name of Cabinet Secretary from the array of respondents would not be possible, even as they fail to cite any reasons for the averment. The drafting of the counter-affidavit usually takes a considerable time on account of the need to consult different Departments and to take inputs from them. In some cases, the Court gives very limited timeline for filling reply.

4. In view of the above, it has been decided for the guidance of the Administrative Ministries that:-

- (i) All the Ministries/Departments will seek the deletion of the name of Cabinet Secretary from the array of respondents and defend the interest of UOI, after receiving the instructions from the Cabinet Secretariat on receipt of the Notice of the case.
- (ii) The Ministry/Department will immediately engage the services of Law Officers/panel counsel, only through the Officer in charge, Central Agency Section for the cases before the Supreme Court, In- charge, Litigation (High Court) of Delhi/CAT, Principal Bench & Lower court section, Branch Secretariats at Bengaluru/Chennai/Mumbai/ Kolkata or the concerned Additional/ Assistant Solicitors General for the cases before other High Courts.

- (iii) Once the Government Counsel is engaged, the Ministry/Department will get an application drafted in consultation with the Government Counsel to implead itself as a respondent (in case it has not already been impleaded as respondent) and also to seek deletion of the name of Cabinet Secretary from the array of respondents, incorporating a prayer to the Hon'ble Court/Tribunal on the following lines:

"..... It is submitted that the President of India has formulated two sets of Rules under Article 77 (3) of the Constitution of India for convenient transaction of Business of the Union. Under the Govt. of India (Allocation of Business) Rules, 1961, Business of the Govt. of India is allocated by assigning one or more Departments in the charge of a Minister. Under the Govt. of India (Transaction of Business) Rules, 1961, the business of the Department is disposed of by or under the general or special directions of the Minister-in-charge (Ref: Rule 3). In short, the business allocated to Ministry/Department is disposed of by the Minister-in-charge after following the Rules cited above. Therefore, the name of Cabinet Secretary, to whom the subject matter of the instant petition is not allocated, may be deleted as a Respondent...."

- (iv) The Ministry/Department will also simultaneously prepare para-wise reply in consultation with all concerned. The parawise comments prepared by the administrative Department/Ministry will be forwarded to the Government Counsel so as to enable him to prepare counter affidavit/reply in accordance with the rules of the Court/Tribunal. Thereafter, the same may be got vetted from the Department of Legal Affairs. The Legal Adviser who vets the counter affidavit has to ensure that the legal defence which are available to the Union Government are properly reflected in the counter. The Counter affidavit will also contain a paragraph containing the prayer that the name of Cabinet Secretary be deleted from the array of Respondents, by reproducing the text as given in (iii) above.
- (v) The Ministry/Department will keep the Cabinet Secretariat informed of further development of the case, including status of compliance of interim directions, if any, given by the Hon'ble Court/Tribunal. The Court case Module of e-Samiksha hosted by the Cabinet Secretariat will also be kept updated by the Ministries/Departments at periodic intervals.

5. This issues with the approval of Hon'ble Minister for Law and Justice.


(Suresh Chandra)

Joint Secretary and Legal Adviser to the Government of India

To

1. All Ministries/Departments as per the list.
2. All the Law Officers as per the list
3. All Assisstant Solicitors General as per the list.
4. Incharge, Branch Secretariats at Bengaluru/Chennai/Mumbai/Kolkata.
5. The Cabinet Secretariat w.r.t. their U.O. No. A-60025/1/2014-CC dated 24.2.2015
6. NIC to upload the same on the Ministry's website.


(R. K. Srivastava)
Deputy Legal Adviser (Judl)

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F. No. 7(8)/2012-E-III(A)
D/o Expenditure
M/o Finance
(E-III A Branch)

North Block, New Delhi
Dated the 16th May, 2012

Office Memorandum

Subject: Submissions before Courts/Central Administrative Tribunals and handling of Court cases on pay and allowances and service conditions etc.

The Allocation of Business Rules, 1961 forms the basis for transacting business of the Government of India by the different Departments/Ministries. Individual Departments/Ministries are responsible for discharging the business "allocated" to them on behalf of the Government of India and to handle the administrative issues relating to service conditions of the employees under its administrative control. In the context of CAT/Court cases related to pay scales, allowances and other service conditions of Government employees/ employees of autonomous bodies, etc., attention is invited to M/o Finance, D/o Expenditure OM No. 7(32)/E-III/92 dated 24th May, 1993 (copy enclosed) stipulating that (i) a common counter-reply should be filed before a Court of Law on behalf of the Union of India by the concerned administrative Department/Ministry where the petitioner is serving or has last served and (ii) a unified stand should be adopted instead of bringing out each Department's/Ministry's point of view in the said reply.

2. Of late it has been observed that Ministries/Departments are not following these instructions as a result of which either the Government's stand is weakened in the case or sometimes the Government is put in an embarrassing position. All Ministries/ Departments are therefore, requested to comply with the following while handling cases filed by Government servants or their Associations/Unions on matters related to pay and allowances and other service conditions:

- (i) Court/CAT cases should be handled expeditiously and within the required time frame. Sometimes, references are made to the nodal ministries/departments dealing with policy matters at the eleventh hour, i.e. a few days before the last date fixed by the Court/Tribunal. This does not give sufficient time to these Ministries/Departments to carefully examine the issues involved. It is, therefore, stressed that on receipt of the Notice along with the original Application/Petition, the Administrative Department/ Authority should immediately prepare para-wise comments /counter-affidavit. Wherever necessary, the specific points on which comments of other nodal Departments like Department of Expenditure, Department of Personnel & Training, Department of Pensions and Pensioners' Welfare, etc. are required

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may be brought out clearly. Thereupon, reference should be made to the concerned nodal Ministry/Department on priority basis. The matter may thereafter be referred to the Ministry of Law/ Standing Government Counsel engaged in the matter for vetting and filing the same before the Tribunal/Court.

- (ii) It has also been observed that at times the Standing Counsels appointed do not attend the Court hearings. In such an event, the matter must be taken up with the Department of Legal Affairs, Ministry of Law for taking action against Counsels who absent themselves from hearings without valid reasons. Further, the Ministry should ensure arrangements for appearance before the Court/Tribunal as and when the matter comes for hearing and for this purpose proper liaison with the Government counsel should always be maintained. In addition, the Counsels must necessarily be briefed thoroughly before they attend Court proceedings.
- (iii) All cases filed in CATs or Courts have to be defended by the Admn. Ministry/Department/Organisation where the Government servant is serving or has last served. In case other Ministries/Dep- have been arrayed as respondents, they are to be treated merely as pro-forma parties and the matter has to be dealt with by the Admn. Ministry itself on behalf of the Government of India i.e. on behalf of all the other Ministries/Departments involved. In other words, there has to be only one counter affidavit submitted before the Court on behalf of the Government and it has to be prepared by the Ministry/Department where the applicant is serving / has last served. However, since other Ministries/Departments are also involved, they have to necessarily be consulted at the stage of formulating the draft counter reply.
- (iv) It has further been observed that while handling service matters/cases of the Government servants, the administrative Ministries/Departments in their communications to the Government servants/Associations etc. or even in the affidavits filed/submissions made before the Supreme Court/Tribunal etc. make specific references to a Ministry/Department under whose advice/directives a particular decision has been taken. This given an impression that the decision is that of the Ministry/ Department which has been consulted and not that of the Government. Such allusions place the Government in an embarrassing position. It is, therefore, stressed that while communicating decision(s) on the representation(s)/complaint(s) etc. submitted by the Government servants or their Associations, etc. the final decision should be in the name of the appropriate authority and in no circumstances, the communication should convey or give an impression that the decision was based on the advice of a particular Ministry/Department which accepted/ rejected the demand(s). Exceptions may be made in respect of the sanctions etc. where according to financial regulations

under rules or other mandatory provisions, it may be obligatory to mention the name of the specific authority with whose concurrence, or in consultation with whom the sanction has been issued.

- (v) Similarly, in case of affidavits filed or oral submissions made before the Courts/CAT, a unified stand should be adopted instead of bringing out each Department's/Ministry's point of view in the said reply. Even in cases where the matter is pending before a Ministry/Department the submissions made should be that the matter is under consideration of the Government and not that of any particular Admn. Ministry/Department. In one such instance, the Admn. Ministry has in its submissions before the Court stated that while it agrees "in principle" to concede to the demands of the petitioners/applicants, it is D/o Expenditure which is not agreeing to the proposal. This position was adopted even as consultations between the two Departments were still underway and the issue at hand was yet to be resolved. A situation like this must be avoided.
- (vi) In cases where the Court takes a decision against the Government, ~~the Admn. Ministry/Department should take immediate steps to~~ analyse the judgement and arrive at a view in consultation with the nodal Ministry/s concerned as to whether the same should be implemented or filing of an appeal or SLP is called for. The reference to nodal Ministry/s for their advice needs to be made well before the last date for filing Review Application before the CAT itself/an appeal before the High Court/SLP in the Supreme Court. The grounds on which the same are being filed have to necessarily be spelt out in the event of deciding that filing of such a Review application / SLP is necessary.
- (vii) In case a delay in filing the reply is apprehended, necessary steps to seek extension in time or stay orders should be taken on an urgent basis with the assistance of Standing Counsels.
- (viii) In certain cases, the Tribunal/Courts may not deliver substantive judgements in the matter and may direct the Government to consider/take a final view in the matter based on certain guidelines etc. The Tribunal/Court may desire final decision by a specific date. In all such cases, it is essential to ensure compliance of the orders within the specified time. In case any delay is expected on this score, extension of time from Tribunal/Court should always be sought. In such cases also, it has to be ensured that the matter is referred to different nodal agencies/Departments well before the last date of taking a final decision

3. In a nutshell, it is primarily the responsibility of the Administrative Ministry to ensure that timely action is taken at each stage a Court case goes through and that a unified stand is adopted on behalf of Government of India

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at every such stage. In no case should the litigation be allowed to prolong to the extent that it results in contempt proceedings. For this purpose, a proper mechanism for monitoring of court cases must be put in place by each Ministry/Department. Financial Advisers may ensure that cases requiring a reference to Department of Expenditure are invariably processed in a timely manner and the timelines monitored so that any contempt proceedings do not arise.

4. This issues with approval of Secretary (Expenditure).

Madhulika Prasad
(Madhulika P. Sukul)
Joint Secretary (Pers.)

1. Secretaries of all Ministries/Deptts.
2. Chief Administrators of all UTs.
3. All Financial Advisers