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STUDY MATERIAL ON HANDLING OF LITIGATION IN GOVERNMENT – A SYNOPSIS

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LITIGATION MANAGEMENT

(How to Handle CAT/Court Cases)

1. Introduction

1.1 Of the three resources of any organisation, namely - Men, Money and Materials; the former assumes a far greater significance than the latter resources. Conflict within the group and with other groups is a very natural process in any organisation, something which cannot be wished away and should never be allowed to be overlooked. For, a conflict is required to be managed to the holistic advantage of the organisation. Thus, appropriate intervention is required at some stage of the conflict. In this context, members of the organisation must have an opportunity to air their grievances. The forum for such grievance management can be within the system or even outside.

1.2 In the government machinery, provisions for such external avenues have been made based on the subject matter of the grievance as well as on the geographical jurisdiction. For example, matters related to recruitment and service conditions of any person aggrieved from the decision of Central Government can be raised in the Central Administrative Tribunals, whereas grievances of government employees on any other subject will have to be raised before the appropriate court of law. Secondly, such matters will have to be raised before a bench of CAT/Court, which has the geographical jurisdiction over the matter as well.

2. Central Administrative Tribunals

2.1 Central Administrative Tribunals has been established under the provisions of Administrative Tribunals Act 1985 in order to provide economic and speedy redressal to the grievances. CAT has branches at various parts of the country having jurisdiction over specific states / areas. Members of the Armed Forces, employees of Supreme Courts / High Courts and Secretariat staff of the Parliament are, however, not covered within the scheme of CAT.

2.2 The proceedings in the CAT are judicial in nature, but the CAT is not bound by the provisions of the Civil Procedure Code (CPC) or Criminal Procedure Code (CrPC) or the Indian Evidence Act. It is guided by the principles of natural justice which, in essence, is impartiality and fairness.

3. Where, when and how to file an application?

3.1 Jurisdiction of a particular bench for filing an application is determined by the following parameters:

- (a) The place where the applicant is posted for the time being.
- (b) The place where the cause of action, wholly or in part has arisen.

3.2 In the case of persons who are not presently in service including those retired, dismissed etc., the place of residence will be the crucial factor determining the jurisdiction of the bench. In case of disputes, decision of the Chairman of the CAT, in Delhi, will be final.

3.3 Before filing an application before the Tribunal the applicant/complainant must ensure that:

- (a) The order issued is final in nature and has been passed by an authority competent under the rules to make.
- (b) An appeal or representation against the order has either been rejected or has remained unanswered for a period of six months. This also holds true in case the representation / appeal is against non-issue of an order which is adversely affecting the prospects/requirement of an employee.

3.4 The normal period within which an application can be made before the CAT is:

- (a) Within one year from the date of the final order made in disposal of appeal, representation, revision etc.
- (b) One year after the expiry of 6 months from the date on which such appeal or representation, application for revision has been made but no order was made by the competent authority.

3.5 However CAT is competent to relax the period of limitation in deserving cases. CAT also has the power to entertain cases in which departmental remedies have not been exhausted.

4. Composition of the CAT

4.1 Benches of the CAT are located all over the country. Principal Bench is located in New Delhi and other 16 benches are located mainly at the seats of the High Courts in the country. In addition we have 19 circuit benches which are controlled by one of the benches. Every Bench has got a geographical jurisdiction. For example the Bench at Chennai has jurisdiction over all the Central Govt. offices in Tamil Nadu and Pondicherry. The Bench at Guwahati has

jurisdiction over all the North Eastern States. The Bench at Lucknow has jurisdiction over some of the districts of Uttar Pradesh whereas the remaining districts of Uttar Pradesh are under the Jurisdiction of Allahabad Bench.

4.2 Cases in the Tribunal are decided by Members or Chairman. There is only one Chairman for all the Benches of CAT and his office is in the Principal Bench, New Delhi. Other Benches are headed by a vice Chairman appointed in each of 16 benches. Besides, the tribunal have members from two streams viz. Judicial Stream and Administrative Stream. They are known as Member (J) and Member (A) respectively.

4.3 The word Bench is also used to denote the number of judicial functionaries hearing and deciding a case. Single Bench comprises only one functionary hearing and deciding a case. Single Bench may comprise of a Member (J) or a Member (A) or Chairman. A Division Bench comprises of two persons.

5. Procedure in the CAT

5.1 An aggrieved person can submit an application in the prescribed format at the registry of the bench with a fee of Rs.50/- either in person or through his advocate. Initially it is scrutinized by the officials of registry at the filing counter and a number is allotted to it. After detailed scrutiny of the documents to identify and remove deficiencies, the application is placed before the appropriate bench. Matters like Pay & Allowances, Transfer, Pension, Adverse Entries in the APAR, Accommodation, etc. are placed before Single Bench, while matters such as seniority, promotion, disciplinary proceedings, etc, are earmarked for Division Bench.

5.2 Other kinds of applications viz. Miscellaneous Application, Petition for Transfer, Review Application and Contempt Applications are also filed in the CAT. Miscellaneous Applications (MA) are filled on issues relating to an OA. Some of the instances when MAs are filed are as under:

- (a) In cases where more petitioners join hands to file an OA; or
- (b) Some additional information which has been omitted in OA is to be submitted before the bench; or
- (c) More respondents are to be called; or
- (d) The application is being filed after the expiry of the prescribed period of limitation and the applicant prays for condonation of delay; or
- (e) The respondent seeks more time for implementation of the directions of the CAT, etc.

5.3 Miscellaneous Applications are filed along with an OA or in continuation of an OA and are referred to as MA No. in OA No.

5.4 Once the OA is filed; it is heard by the bench to examine whether it is a fit case for admission. Only the applicant or his counsel can appear before the bench at this stage. After hearing, the bench either rejects the case or issues notice to the respondents. The notices issued by the CAT are of the following three kinds:

(a) **Notice for admission:** The respondent may be asked to show cause against admission. In such cases the respondent may consider filing a short reply citing preliminary objections regarding the maintainability of the OA.

(b) **Notice after admission:** In such cases, the respondents are required to file reply contesting on merit as to why the relief sought by the applicant should not be granted. However, in case there are points on the maintainability of the OA, the same can also be advanced in the reply of the respondent.

(c) **Notice for distribution to the employees:** Sometimes respondent departments receive notices to be served on its employees. In such cases, after serving the notice within stipulated period the concerned department is required to file an affidavit in compliance enclosing the copies of the acknowledgement.

6. Action by departments on receipts of notice

6.1 On receipt of the notice, which contains the OA and all the annexure in paper book form, it is examined from various angles. In case there are more than one respondents, it is to be examined to ascertain **which department is the main respondent**. This is important because as per instruction, only one reply is to be filed on behalf of the Government of India. The department where the cause of action arose or the department which issued the final order which is being challenged in the OA, is required to contest the case. The main respondent is required to obtain the views of other respondents and incorporate the points in their reply and also indicate that views of the other respondents have been enjoined in the reply. In the case of private respondents (employees etc.), the department is not required to take any action.

6.2 Sometimes some officials may be impleaded by name for the official acts performed by them. Contempt petition is one such example. But even in an O.A., some officials may be impleaded by name for the official acts performed by them. In such cases, the defence of their case is taken up by the departments concerned. The individual may be required to file a small reply adopting the reply filed on behalf of the Department. One or two paragraphs of the OA which directly pertain to the individual will have to be answered in the reply of the individual.

6.3 The department which receives the OA should immediately check as to whether any genuine relief is due to the applicant and try to redress the grievance without any loss of time. OA is then examined for its merits – i.e. facts and maintainability (i.e. procedural and technical lapses). The objections on maintainability are also called Preliminary Objections.

6.4 Grounds of Preliminary Objections are as under:

- (a) **Limitation** :- Whether the case has been filed after the expiry of limitation period.
- (b) **Non-Joinder/Mis-Joinder** :- Whether all the concerned parties have not been made respondents or irrelevant parties have been made respondents in the OA.
- (c) Whether the case has been filed **Without exhausting available departmental remedies.**
- (d) Whether the case **Does not fall within the jurisdiction of CAT/bench** where it has been filed.
- (e) **Plural Remedies** :- An OA should seek a single relief or relief consequential to the main relief. If an OA is filed seeking more than one unconnected relief, the same is not permissible under the rules.
- (f) **Res Judicata** :-The same_matter, which has been decided by the CAT or any other authority can not be raised before it again by the same parties even for consequential relief.
- (g) **Estoppel**:- Whether applicant seeks to testify against a statement of fact by which he had sought benefits from the department on earlier occasions such as change in date of birth, option once exercised for fixation of pay, etc.
- (h) **Suggestio Falsi and Suppression Veri** :- Whether the applicant has suggested some falsehood or suppressed an information which has a critical bearing on the case while the same was available with him.

6.5 The preliminary objection becomes most vital when a notice against admission is issued by the bench. The cases can be rejected at this stage on grounds of non-maintainability alone. Therefore, short reply sent to the CAT should contain Preliminary Objection, if any, to facilitate rejection of OA on maintainability.

6.6 However, once a case is admitted, detailed reply is to be filed, contesting the case on merits, in triplicate, in proper book form with index, etc. The first task is to have Govt. Counsel appointed through the Litigation Section of the Ministry of Law. In exceptional cases a private advocate outside the panel can be appointed. Government Counsel may have to file his application and seek time from CAT for filing reply. Section 23(2) of the CAT Act, 1985

also makes provision for the nomination of Group 'A' officer of the department as the **Presenting Officer** with the approval of Minister-in-Charge. A Presenting Officer can file reply and argue cases on behalf of respondents.

7. Preparation of reply once the OA is admitted:-

7.1 The following tasks are involved in the preparation of reply:

- (a) Ascertaining the veracity of the facts narrated by the applicant;
- (b) Ascertaining the correct facts relating to the issue agitated in the OA;
- (c) Exploring the possibility of raising any preliminary objection regarding the maintainability of the OA;
- (d) Collection of documents in support of the case of the respondents;
- (e) Identification of any similar case filed by any other employee of the department for similar relief. This will not only facilitate easy preparation of the reply but also enable the respondents to move the Tribunal for linking the similar cases to be heard and disposed off together; and
- (f) Identification of any precedent especially unreported cases which will be known only to the department. This will strengthen the case of the respondents if the earlier decision was in favour of the respondents. Alternatively, it will help the respondents to effectively resist the present OA by distinguishing it from the earlier case.

7.2 After the facts and documents are collected, the process of drafting reply begins. Before the material portion of the reply, there are certain introductory paragraphs required in the reply and the same are as under:-

- (a) The identity of the official filing the reply should be given in the opening paragraph;
- (b) There should be a recitation to the effect that the officer filing reply is competent and has been duly authorized to file the reply on behalf of the respondents; and
- (c) There should be confirmation to the effect that he/she has read the OA and has understood the contents. It is generally stated that **'except as has been expressly admitted hereunder, all the material averments in the OA are denied'**.

7.3 Often it may not be sufficient for the respondent to simply admit or deny what has been stated by the applicant in the OA. It will be of great advantage if the facts of the case are presented in chronological or logical order in a cohesive manner in its entirety so that the complete details of the case could be understood in one go. It will be a good practice to open the reply of the respondents (after the introductory paragraphs mentioned above), with “**Brief Background of Case**”. This portion should contain all the relevant facts (of course only the relevant facts) which are essential for acquiring complete knowledge of the case. It may be appreciated that the applicant would be interested only in his case and will be presenting the facts of the case as known to him or as suitable to him. The respondent, being responsible for larger issues, would have taken decision based on certain guidelines by the nodal agencies or as a result of the policy decision, etc., which may not be even known to the applicant. Further, the respondents would also know the repercussions if the applicant’s request is accepted. Presentation of these facts in proper perspective goes a long way in enabling the court to appreciate the case of the respondents. It is also worth remembering to ‘**state such additional facts as may be found fit for the just decision of the case**’.

7.4 The third part of the reply should contain preliminary objection, if any.

7.5 Thereafter, parawise reply on merits, on the averments made by the applicant in his OA is given. This is perhaps the most crucial part in the respondent’s reply. Every averment made by the applicant must be viewed in its proper perspective and the respondent’s version of the same may be given. For example, assume that an applicant has stated in para 1 of the OA “This application is being filed against the illegal order of suspension passed by the Respondent no. 2 vide order No. dated Annexed and marked as Annexure 1”. On the face of it, it may appear that there is nothing to counter or contradict what has been stated by the applicant because he has only cited the order against which he is moving the Tribunal. While referring to the order of suspension, he has described the same as illegal”. It would be appropriate to place on record that the impugned order is valid in the eyes of law.

7.6 The following points may be kept in view while drafting reply :

- (a) In order to avoid repetition of facts, the respondents may invite the attention of the Tribunal to the relevant paragraph.
- (b) At times, the applicant might have mentioned certain facts which are not essential for the case and the same may not be within the knowledge of respondents. For examples, an applicant whose pension has been withheld would have stated facts relating to his domestic problems as well. Under such circumstances the respondents may plead ignorance of the facts simultaneously pointing out that the domestic circumstances are not relevant for determining the legal validity of the impugned order.
- (c) On certain occasions, the respondents may not be in position to comment on the truth or otherwise of the contention of the applicant even though the contention may have a

bearing on the case. For example, a person may be pleading that he could not file OA in time because he was suffering from some ailment and hence his prayer for condonation of delay be allowed. Under such circumstances, the respondents may plead ignorance and also submit that the applicant **be put to strict proof** of the averments made by him.

- (d) There may be paragraphs, which are formal in nature such as the details of the Postal Order, etc. Against such paragraphs, the respondents may state '**being formal, does not call for any reply** from the answering respondents'.

7.7 Finally, the respondents are required to make a formal prayer for the dismissal of the OA. The prayer may be in the following form :

Prayer - *“In view of the submission made hereinabove, in the brief background of the case, preliminary objections and the parawise comments, the applicant is not entitled to any of the relief prayed for and the application is liable to be dismissed with costs. It is prayed accordingly”.*

7.8 This is required to be followed by verification by the officer who signs the reply.

7.9 In the course of the reply, whenever supporting documents are available for substantiating the contention of the respondents, a reference should be made in the body of the reply to the appropriate annexure. The documents annexed to the reply are to be marked as R-1, R-2, R-3, etc. The copies of the documents are required to be attested by a legal practitioner or a gazetted officer as under:

This annexure is the True copy of the original document.

Sd/-
Name and Designation

7.10 The language of the reply has to be clear, precise and free from ambiguity. The following points may be kept in mind while preparing the reply:

- a) The names of the persons and places must be spelt accurately, throughout the reply;
- b) Abbreviations should be avoided as far as possible, especially when they pertain only to Government Departments;
- c) Generally pronouns like he, she etc., are avoided in the pleadings. Parties are referred through their legal positions e.g. “Applicant No.3 joined service under Respondent No.2 with effect from.....”
- d) Whenever a statutory provision is referred to, the exact language of the statute should be used e.g. as per CCS (CCA) Rules, 1965, reduction to lower stage in the time scale for a period not exceeding three years' more or less means the same as for a maximum

period of three years. However, such conversions should be strictly avoided while drafting pleading for the court.

7.11 After draft reply is made, the same must be got approved by the Govt. Counsel who has been engaged for defending the case. After clearance from the counsel, the draft may be required to be got vetted by the Legal Advisor.

7.12 Rule 4 of the Central Administrative Tribunal Rules of Practice, 1993, relating to the preparation of pleadings is reproduced hereunder for ready reference:-.

“4. Preparation of pleadings and other papers-

(a) All pleadings, affidavit, memoranda and other papers filed in the Tribunal shall be fairly and legibly typewritten or printed in English or Hindi Language on durable white foolscap folio paper of Metric A-4 size (30.5 cm long and 21.5 cm wide) on one side only in double space with a left margin of 5 cm and right margin of 2.5 cm duly paginated, indexed and stitched together in the paper-book form. The index shall be in Form No.1.

(b) English translation of documents/pleadings shall be duly authenticated by any legal practitioner.

7.13 The reply can be signed by any of the officer authorized for the purpose. The instructions in this regard are contained in Government of India, Department of Personnel & Training Notification No.A-11019/105/87-AT dated 28th September, 1993 published as GSR 630 in the Gazette of India at the same time. As per the above notification, any Group-A Officer in any Ministry/Department of the Government of India or any Desk Officer in any Ministry/Department of the Government of India or any Group A Officer in any Non-Secretariat office of the Government of India is authorized to sign all pleadings and other documents to be filled for and on behalf of the Union of India before the Central Administrative Tribunal. The above officers as are acquainted with the facts of the case also are authorized to verify the pleadings. In respect of Contempt Proceedings, however, the officers impleaded by name are required to file the reply.

7.14 After the reply is complete in all respects and duly signed by authorized officer, a copy of the same is delivered by hand or sent by registered post, to the applicant or his counsel. The proof of delivery or dispatch of the reply to the applicant must be produced before the Registry at the time of filing of reply. The registry gives acknowledgement for receipt of reply.

8. Action in the CAT

8.1 Once reply is submitted, opportunity is given to the applicant/counsel to submit a rejoinder to the reply within a specified time. Once these formalities are completed the case comes up for hearing or put 'on board' depending upon the importance of the case. On the

date(s) assigned for hearing, counsels of both the parties are given opportunity to argue their cases in front of the bench. After carefully going through the written replies and pleadings from both parties, the bench conveys the decision, within a reasonable period.

8.2 It is desirable that a responsible official of the department connected with case is also present in the tribunal / Court during the hearing in order to liaise with the counsel for respondents to clear doubts etc.

9. Action when CAT order is against the Govt.

9.1 In cases where the matter is decided against the government, immediate steps should be taken to obtain a copy of the order and analyze the direction. A view needs to be taken in consultation with the nodal Ministry and the Legal Advisor of the administrative ministry concerned as to whether the order should be implemented or a Writ Petition needs to be filed in the matter in the High Court. The reference to nodal Ministry for their advice should be made well before the last date for filing Review Application before the CAT itself or Writ Petition before the High Court.

9.2 In cases where it is considered necessary to file Review / Writ Petition, the following documents will be required:-

- (a) Certified copy of the CAT / Court order against which Review / Writ Petition is proposed to be filed.
- (b) copy of Original Application and reply thereto.
- (c) Opinion of the Counsel who defended the case.
- (d) Opinion of the Branch Secretariat, Ministry of Law.
- (e) Grounds on which the order of the CAT / Court order is proposed to be contested.
- (f) Whether the above grounds were brought to the notice of the CAT, If not, why these grounds which are now proposed to be advocated in the appeal were not made use of in the CAT.
- (g) Last date by which review / appeal is to be filed.

10. Review Application (R A)

10.1 Review application lies in the same bench which passed the order in the original OA, unless the Chairman for reasons to be recorded in writing, directs the RA to be heard by any other bench. RA can be filed on the following circumstances only;

- (a) any new / additional material which despite due diligence on the part of the department could not be procured or was not available at the time of passing the order;
- (b) against an error appearing on the face of the judgment .
- (c) any other analogous reason.

10.2 RA is to be filed within 30 days of the receipt of copy of the Order sought to be reviewed.

11. Writ Petition

11.1 A Writ Petition against the order / review order lies in a division bench of the High Court, having the same jurisdiction as the CAT bench, under article 226 of the constitution.

12. Special leave petition (S L P)

12.1 SLP can be filed in the Supreme Court under article 136 of the Constitution against the writ jurisdiction of the High Court. However SLP is available only when substantial matter of law or a matter of great public importance is involved. Advice of the Additional Solicitor General is to be sought before filing an SLP.

13. Contempt Petition (CCP or CrCP)

13.1 Applicants can submit Civil Contempt Petition (CCP) or Criminal Contempt Petition (Cr CP) in case the Tribunal or High Court order is not implemented within the stipulated time frame. As the contempt is directed against the Head of Department, it becomes very embarrassing. In order to avoid such an occasion either in the CAT or Courts, orders are to be implemented within the prescribed time limit or a MA is to be filed before expiry of such time limit seeking more time to implement the order citing reasons thereof.

14. Payment to the Govt. Counsel

14.1 The instructions with regard to payment to the Govt. Counsel for defending the case are contained in **Ministry of Law O.M No.26(1)/97-judl dated 12 May 87 read with their OM Nos. 26 (1)/2011-Judl dated 01st Sep, 2011 and 23 (2)/2011-Judl dated 01st Sep, 2011.** These instructions provide for payment towards drafting / filing the reply, defending the case, out of pocket expenses and appearance for each effective hearing in case hearing in the case continues beyond 3 days. Effective hearing has been defined to be 'A hearing in which either one or both the parties involved in a case are heard by the Court. If the case is mentioned and adjourned or only direction are given or only Order is delivered by the Court, it should not constitute an effective hearing but will be termed as a non-effective hearing. The bill submitted by the counsel should be carefully scrutinized with reference to the instructions contained in Ministry of Law O.M. *ibid*. In case of doubt, the matter can be referred to Ministry of Law and Justice at New Delhi or its Branch Secretariat Concerned.

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