

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

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No. : LC/Advocate Fee Bill/Vol.II

Dated: 15.05.2018

To

All PCsDA / PCA(Fys) / CsDA / CFAs

Subject :- Payment of Legal Fee to Central Govt. Counsels - clarification reg.

With reference to the existing provisions relating to processing of Govt. Counsels Legal Fee bills, a few doubts have been raised by some of the PCsDA/CsDA. The same have been taken-up with the Ministry of Law & Justice, Department of Legal Affairs (Judicial Section) for clarification/guidelines. Based on the clarifications received, the summary of the points of doubt and clarification are as give below:-

No.	Existing provisions and point of doubt	Clarification
i)	<p>The revised fee structure applicable to Govt. Counsels of Supreme Court/High Court/CAT/Distt. Courts has been notified by Min. of Law & Justice, Dept. of Legal Affairs vide their OM bearing No. 26(1)/2014/Judl. dated 01.10.2015. While the fee is revised vide above said OM dated 01.10.2015, all the other terms & conditions contained in various earlier OMs dated 24.09.1999, 14.05.2001, 31.01.2008 and 01.09.2011 shall continue to remain applicable unless specifically revoked. As per Para 12 of general terms & conditions of payment (para 12 of "XIII General") in OMs dated 24.09.1999, "the fee will be payable in two stages firstly, 1/3rd fee after substantial action has been taken, i.e., first stage and secondly the remaining 2/3rd fee after the case has been decided, i.e. second stage".</p> <p><u>Point of Doubt</u></p> <p>As per the OM dated 01.10.2015, a sum of Rs. 9000/- per hearing besides other charges as applicable, is to be paid to the Govt. Counsel. In case the payment is to be regulated in two (02) parts, viz., 1/3rd and 2/3rds, how to determine the total fee payable so as to determine 1/3rd & 2/3rd.</p>	<p>The fee of Rs. 9000/- is to be made per case per day for each day of the effective hearing.</p> <p>With the shift from per case basis to per hearing basis, the distinction of <u>1/3rd & 2/3rd</u> has been done away with.</p>

Contd....2

<p>ii)</p>	<p>In terms of Para 10(a) under “XIII-General” of OMs bearing No.24(2)/99-Judl, 25(3)/99-Judl, 26(1)/99-Judl & 26(2)/99-Judl all dated 24.09.1999, “when the Counsel filed separate and materially different affidavits, applications or grounds of appeal etc. in more than one case but the argument is heard in the main case and the other cases are decided accordingly, the Counsel shall be paid the full fee in the main case and Rs. 150/- in each of the connected case”.</p> <p><u>Point of Doubt</u> Whether the rate of fee of Rs. 150/- has been revised thereafter or not.</p>	<p>The fee has not been revised (High Courts & CATs).</p> <p>Note:- Fee for identical cases in r/o cases in High Courts and CATs not revised in OMs No. 23(2)/2011-Judl & 26(1)/2011-Judl both dated 01.09.2011.</p> <p>However, for identical cases in r/o cases in District & Subordinate Courts, fee revised to Rs. 500/- vide OM No. 27(25)/2011-Judl. dated 01.09.2011. The fee has further been revised to Rs. 750/- per suit for connected cases (maximum 3) vide OM No. 26(1)/2014/Judl dated 01.10.2015.</p>
<p>iii)</p>	<p>Similarly, in terms of Para 10(b) of above said OMs dated 24.09.1999, “when the main case has been contested as in (a) above but in the connected cases either affidavits or grounds of an appeal or petition similar to the one in the main case or nothing at all has been drafted by the Counsel, he shall be paid the full fee in the main case and Rs. 75/- only in each of the connected cases”.</p> <p><u>Clarification sought</u> The revised rate of fee in place of Rs. 75/-, if revised, may be intimated.</p>	<p>The fee has not been revised.</p>

iv)	<p>In terms of OM No. 26(1)/2014/Judl dated 01.10.2015, Part-E, "Clerkage" @ 10% of total fee is payable in respect of cases pending before District & Subordinate Courts.</p> <p><u>Clarification sought</u> Whether "Clerkage" is payable to Govt. Counsels in respect of cases pending before various benches of CATs & High Courts.</p>	<p>Yes, Clerkage @ 10% is payable to the Counsels before various benches of CATs and High Courts.</p>
v)	<p>Three (03) Contempt Petitions, viz. CP/18/2016, CP/209/2016 and CP/210/2016 are pending before CAT (PB), New Delhi and being defended by Govt. Counsel. The 03 CPs have been connected together during the hearing held on 27.09.2016. Prior to 27.09.2016, the cases are being handled separately and hearings held separately.</p> <p><u>Clarification sought</u> Whether the Legal Fee at normal/full rates can be paid to the Govt. Counsel for the hearings held prior to 27.09.2016. On 27.09.2016, the cases have been connected.</p>	<p>In the 3 Contempt Petition's separate fee for each case shall be payable before 27.09.2016 and connected fee shall be paid thereafter.</p> <p>However, if the instant 3 CPs have been marked to different Counsels, separate fee shall be payable to each one of them even after 27.09.2016.</p>
vi)	<p>The rates for Clerkage and typing charges in connected cases sought for.</p>	<p>The rates of clerkage are specified in OMs available on Min. of Law & Justice website. As regards, typing charges, OM. F.No.33(1)/2000-Judl dated 11.09.2000 may be referred to. Para 4 of said OM states as follows:-..... (see annexure attached)</p>


vii)	<p>Dept. of Legal Affairs vide their OM No. 33(1)/2000-Judl. dated 11.09.2000 has issued clarifications on certain issues, applicable to various High Courts/ CATs. As per Para 3 relating to identical cases, where more than ten (10) identical cases are involved, groups of ten (10) cases each may be made, treating one case in each group as the main case and other nine (09) cases as connected cases and pay the fee to Counsel.</p> <p><u>Clarification sought</u> Whether provision of bunching identical cases is applicable in District & Subordinate Courts</p>	<p>The provisions contained in OM No. 33(1)/2000-Judl. dated 11.09.2000 not applicable to Subordinate Courts (bunching in groups). Further, payments to be made in terms of OM No. 27(11)/99-Judl. dt. 24.09.1999 as amended by OM No. 26(1)/2014-Judl dt. 01.10.2015.</p>
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The relevant OMs are available on the website of the Ministry of Law & Justice, Department of Legal Affairs.

2. All the legal fee bills of Govt. Counsels may be regulated accordingly.


(Praveen Kumar Rai)
Sr. Dy. CGDA (AN)

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(Local)


(Praveen Kumar Rai)
Sr. Dy. CGDA (AN)

4. Misc./Out of pocket expenses:-

In para 2(d) of this Department's OM No's F. No. 26(I)/99-Judl, F.No. 24(2)/99-Judl. and 26(2)/99-Judl. dated 24.09.1999, it is clearly stated that misc./out of pocket expenses will be borne by the Ministry/Department on whose behalf the Counsel conducts the case in the concerned Court. As regards ceiling, it may be stated that the Counsel is to be reimbursed the actual expenses incurred. Such expenses are to be paid to the Counsel by the concerned Department to their own satisfaction. For this purpose, if need be, the Counsel can be requested to furnish the details of the misc. expenses incurred. The other course could be that the misc. expenses are directly borne by the concerned Department so that the necessity to reimburse the misc. expenses to Government Counsel does not arise.