GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No.2019/LC/14/1 New Delhi, Dated: 20.06.2019.

The General Managers (Law),
All Indian Railways &
Production Units,
The Chairman, All RRBs

Sub: Procedure for Engagement of Railway Advocates for High Courts, Bench of CATs, District/Subordinate Courts and RCTs.

In continuation of this office instructions with regard to engagement of Railway Advocates for High Courts, Bench of CATs, District/Subordinate Courts and RCTs the following instructions may be adopted in place of the existing practices being followed by Railway Administration for smooth and efficient working, monitoring of Court cases and for strengthening of Legal Department of Railways.

As per allocation of Business Rules, 1961, all the Government Litigation work is to be done by Ministry of Law & Justice. Empanelment of Advocates for contesting Government cases is also a part its functions. For the reason that Railways is a big organization, Ministry of Law & Justice has delegated the power for making the panels of Railway Advocates to Ministry of Railways.

The power of empanelment of Advocates for District/Subordinate Courts and RCT has been further delegated to Zonal Railways, as per this office letter no. 84/LC/1/NR/05 dated 05.11.85. **It has been observed that Zonal Railways are not following the proper procedure for empanelment of Railway Advocates** and at times the Zonal Railways do not even bother to inform the Office of Legal Adviser about the selection of advocates for these Courts. The Office of Legal Adviser while forming the panels of Railway Advocates for High Court and benches of CATs, invariably forwards the file for concurrence/final approval to Ministry of Law and Justice. It has also come to notice that while forming the panels of Railway Advocates, at times Law Branch of the Zonal Railway is also not being involved, especially in respect of the panel of Railway Advocates for RCTs. Further while forming the panels for District/Subordinate Courts and RCT some of the Zonal Railways are putting up unjust restrictions with regard to qualification, age, experience etc. which is not provided in the terms of engagement of advocates. In order to ensure empanelment of advocates is being done as per extant instructions, **henceforth all the panels of District/Subordinate Courts and RCT should be submitted, by Law Branch of the Zonal Railway, to the Office of Legal Adviser, Railway Board, for final approval.**

It has been observed that on number of occasions when a case is filed in the High Court/District Court/Tribunal which is outside the Jurisdiction of a particular Zonal Railways, the concerned Zonal Railway nominates advocates on their own or by directly communicating with other Zonal Railway. This hampers proper monitoring and distribution of the cases amongst the empanelled advocates. **Henceforth, the Zonal Railways are directed to get the nomination of advocates done through the office of the Legal Adviser, Railway Board, whenever such an occasion arises in respect of all the Courts/Tribunals.**

It has also been noticed that different departments of the Zonal Railways Commercial, Engineering, Personnel and RPF etc. are nominating advocates on their own without consulting the Law Branch of their Railway. Law Branch of the Zonal Railways may issue necessary instructions in this regard, so as to ensure that the nomination of advocates in each case is invariably done only through the law Branch of the concerned Zonal Railway. **In all cases wherein advocates have been appointed without consultation of Law Branch of the Zonal Railway during the last two years, the appointment of the advocates may be regularized through the Zonal Rail Law Branch.**

At times, Zonal Railways are utilizing the services of Ld. ASG in the High Court without consulting/informing the office of Legal Adviser especially in the matters wherein the Ld. ASG agrees to appear for Railway Administration on usual fee terms. Ld. ASGs have been appointed by Ministry of Law and Justice, as such their engagement by Railway Administration in any matter has to be done from the office of Legal Adviser. In this regard, attention of Zonal Railways is also be drawn to the instructions as provided in Office Memorandum No.34(01)/2012-Judl. dated 5.12.12 of Ministry of Law and Justice while engaging ASGs for Railway administration. (Copy enclosed).

Accordingly, Zonal Railways, are advised to follow the procedure as stated above in regard to engagement of Railway Advocates and Ld. ASGs.

(A. Khatwani)
Dy. Legal Adviser
Railway Board.

No.2019/LC/14/1 New Delhi, Dated: 20.06.2019.

Copy to Dy. G.M.(Law)/Sr. Law Officer/ Law Officer, All Zonal Railways and Production Units for information and compliance.

(A.Khatwani)
Dy. Legal Adviser
Railway Board

No.34 (01)/2012-Judl
Government of India
Ministry of Law and Justice
Department of Legal Affairs
Judicial Section
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Shastri Bhawan, New Delhi
Dated the 5th December, 2012.

OFFICE MEMORANDUM

Sub : Engagement of Counsel on behalf of Union of India- regarding

It has been noticed in the recent past that the Administrative Ministries instead of following standard practice have been insisting upon: engagement of Law Officers on special fees; engagement of Panel Counsel /Assistant Solicitors General as special Counsel; engagement of Law Officers with varied terms and conditions such as to be assisted by specific junior(s) who at times are not even on the panel of Union of India; engagement of Law Officers in courts/places other than their normal place/court of operation; transporting the ASGs/Counsel/ Asstt. SGs from one place to another; engagement of Counsel who are not even on the panel of Union of India; and engagement of Panel Counsel without consent of the concerned controlling authorities.

Such deviations violate procedure established by law and are thus against the spirit of the rule of law.

2. It may be recalled that as per the **Government of India (Allocation of Business) Rules, 1961** the Department of Legal Affairs has been assigned the task of engagement of counsel on behalf of the Union of India in various Courts/Tribunals including conduct of cases in the Supreme Court on behalf of the Central Government and on behalf of the Governments of States participating in the Central Agency Scheme.

3. In pursuance of the above mentioned Rules and with a view to smooth conduct of litigation on behalf of Union of India, this Department has appointed 20 Law Officers, comprising Attorney General for India, Solicitor General and Additional Solicitors General, 29 Assistant Solicitors General and a number of Counsel in various Courts / Tribunals on the laid down terms and conditions. In spite of the exhaustive list of Law Officers and Counsel, terms and conditions of their engagement etc., requests for special counsel, private counsel etc. are routinely being made to this Department. Also engagement of counsel are being made without the prior approval of this Ministry and files are routinely being routed for *ex post facto* approval which is contrary to the spirit of the Allocation of Business Rules.

Contd...

4. In view of the above, it has been decided for the guidance of the administrative Ministries that except in extraordinary cases determined by this Ministry:-

(i) no proposal for engagement of Law Officers/panel counsel as special counsel in Government litigation on special rates of fees shall be entertained;

(ii) a counsel not on the panel will be engaged only in very exceptional case;

(iii) no proposal for *ex post facto* approval in respect of the engagement of any counsel and payment of their fee shall be entertained unless the prior approval of this Ministry is not possible in exceptional circumstances; and

(iv) all the Ministries/Departments are requested to engage the services of Law Officers/ panel counsel, in their litigation matters only through the Officer in charge, Central Agency Section for the cases before the Supreme Court/ Branch Secretariats at Bengaluru/Chennai/Mumbai/Kolkata or the concerned Assistant Solicitors General for the cases before various High Courts.

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
Ph. 23381589

To

1. All Ministries/Departments as per the list.
2. All the Law Officers as per list.
3. All Assistant Solicitors General as per the list.
4. Incharge Branch Secretariats at Bengaluru/Chennai/Mumbai/ Kolkata.

(Dr. R. S. Shrinet)
Assistant Legal Adviser to the Government of India