भारत सरकार Government Of India
रेल मंत्रालय Ministry Of Railways
(रेलवे बोर्ड) (Railway Board)

No. 2010-BC-AP-5.4.2/2008-09 New Delhi, Dated 04.05.2012

The General Managers,
All Indian Railways.

विषय : **Avoidable expenditure due to injudicious constitution of Arbitration for settlement of claims on Excepted Matters.**

During audit inspection in one of the Railways, it has been observed that the procedure for settlement of Claims in Excepted matters through arbitration was not followed as prescribed by Ministry of Railways. In this regard, Clause-63 of General Conditions of Contract (GCC) and Board's letter no. 2000/CE-ICT/39, dated 07.06.2002 need to be gone through, wherein it is mentioned that -

> "All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the contractor to the GM and the GM shall within 120 days after receipt of the contractor's representation, make and notify decisions on all matters referred to by the contractor in writing provided that matters for which provision has been made in Clauses 8, 18, 22(5), 39, 43(2), 45(a), 55, 55-A(5), 57, 57A, 61(1), 61(2) and 62(1) to (xiii)(B) of General Conditions of Contract or in any Clause of the Special Conditions of the Contract, shall be deemed as 'Excepted Matters' (matters not arbitrable) and decisions of the Railway authority, thereon shall be final and binding on the contractor; provided further that 'Excepted Matters' shall stand specifically excluded from the purview of the Arbitration Clause."

It has been observed that these instructions are not being followed meticulously by the Railways; due to which in some cases, although the claims received from contractors had fallen under the category of 'Excepted Matter', i.e. non-arbitrable, yet, they were indiscriminately referred to the Arbitrator for adjudication. Thus, by referring claims on 'Excepted Matters' for arbitration in those cases, Railway Administration sustained avoidable expenditure. This has resulted in gross violation of contractual sanctity and verdict of the Supreme Court, causing incurrence of avoidable payments on claims.

Non-observance of provisions of General Conditions of Contract (GCC) and related instructions has been viewed quite seriously by the Ministry. It is, therefore, reiterated that Zonal Railways should review all such cases and ensure that necessary action is taken in this regard & the procedures, as prescribed are followed. Any lapse on this account would be viewed seriously and responsibility shall be fixed.

04/05/12
(आलोक कुमार)
कार्यकारी निदेशक/सिविल इंजीनियरिंग(जी)/रेलवे बोर्ड

Copy to : The General Manager, Northeast Frontier Railway, Maligaon, Guwahati with reference to Audit Para No. 5.4.2.