

New Delhi, the 5th June, 1987

OFFICE MEMORANDUM

Subject: Revision of fee payable to Special panel Counsel
Sr. Counsel Group I, Sr. Counsel Group II,
Junior Counsel/Advocates on Record in the
Calcutta High Court w.e.f. 1-10-1985.

Enclosed herewith please find a copy of the Revised Scheme containing terms and conditions for the engagement of Special Panel Counsel, Senior Counsel Group I, Senior Counsel Group II and Junior Counsel/Advocate on Record in respect of Civil litigation and such criminal cases as may be entrusted to them in Calcutta High Court effective from 1st April, 1987.

For the guidance of various Ministries/Departments, the following clarifications are given for settling the fee bills, etc, payable to them for their engagement in the Calcutta High Court, in courts other than the High Court, Commission of Inquiry, Tribunals etc, in the country:-

- (a) The Counsel will be engaged only in accordance with the revised terms and conditions applicable to them w.e.f. 1.4.87 and no case for payment of fee at the higher rates than the rates prescribed in the Revised Scheme will be entertained by this Department.
- (b) In respect of the cases listed for hearing in the Calcutta High Court, Commission of Inquiry, Tribunals, other courts etc. ~~located in Calcutta~~ the Counsel will be engaged by the officer incharge of the Branch Secretariat or any other authorised officer of the Branch Secretariat of this Department at Calcutta depending on the importance of the case, legal issues and financial stakes involved. However in respect of their engagement in Courts, Commissions of Inquiry, Tribunals etc, outside Calcutta prior approval of the Department of Legal Affairs, Ministry of Law and Justice, New Delhi will be required.

.....2/-

- (c) For appearance in the Calcutta High Court, expenditure in connection with, the fee them is to be borne by the Department of the Ministry of Law & Justice (Branch Secretariat, Calcutta). The fee bills are to be processed by the Branch Secretariat, Calcutta and the payment is to be made directly by the Counsel concerned. Other Misc. and out of pocket expenses will be borne by the Ministry/Department on whose behalf the Counsel conducts the cases in the concerned court. Such expenses will be paid in advance to the Branch Secretariat-Calcutta in accordance with the instructions issued by the Branch Secretariat. However, the expenditure relating to TA/DA payable to the Counsel for their appearances in courts, Tribunals, Commissions of Inquiry outside Calcutta and in foreign countries, is to be borne by the Ministry/Department on whose request the Counsel is engaged to conduct the case.
- (d) The Counsel will be paid fee at the old rates in respect of their appearance in the High Court etc. and other work done by them prior to 1st October, 1985 and at the revised rates in respect of the work done by them on/after 1st October, 1985.
- (e) The present procedure, which may be amended from time to time, regarding the 'high fee' cases or engagement of Special Panel Counsel will continue to be followed.

3. All the Ministries/Departments which propose to engage the Counsel to appear in the Calcutta High Court are requested to contact the officer Incharge of the Branch Secretariat of this Ministry at 4, K.S. Roy Road, Calcutta. However, for the engagement of the Counsel outside Calcutta, they may obtain the approval of the Department of Legal Affairs, Ministry of Law and Justice, New Delhi after settling the terms and conditions of their engagement through the Branch Secretariat Calcutta. They are further requested to make arrangements for their travel in consultation with the Counsel concerned. The Department are also requested to ensure that the bills in this respect are made in their names and settled by them directly so that the necessity of reimbursement of expenses incurred by the Counsel later is minimised and they are not put to inconvenience.

4. All the Ministries/Departments are further requested to ensure that the bills in respect of other expenditure if incurred by the Counsel in connection with TA/DA etc. for their appearances in various Courts etc. outside Calcutta, are sanctioned and money paid to them immediately and in any case not later than a month from the date of receipt of the bills.

Travel/Hotel expenses: In addition to the Counsel will also be entitled to travel by air (economy class) or first class, road mileage for the journey from his headquarters/airport/railway station and vice-versa and from airport/railway station to the place of his stay or headquarters and vice-versa at the rates admissible to Grade I/Class I Officers of the Central Government. He will also be paid a lumpsum amount of Rs. 100/- as conveyance charges for performing local journeys while outside the headquarters. He will also be entitled to a reasonable actual expenses for stay in hotel, subject to a maximum of Rs. 200/- per day.

X. CLERKAGE:

The Counsel will not be entitled to the payment of clerkage on the fees payable to him.

XI. OUT OF POCKET EXPENSES:

1. The amount required for court fees at the time of filing a case and other miscellaneous expenses should be obtained by the Counsel in advance from the Branch Secretariat, Calcutta. An account of the expenses incurred should be rendered to the Branch Secretariat while presenting the final fee bill, as mentioned earlier.

XII. RIGHT TO PRIVATE PRACTICE AND RESTRICTIONS:

1. A Counsel will have the right to private practice which should not, however, interfere with the efficient discharge of his duties as a Counsel for the Government of India.

2. A Counsel shall not advise any party in or accept any case against the Government of India in which he has appeared or is likely to be called upon to appear for or advise or which is likely to affect or lead to litigation against the Government of India.

3. If the Counsel happens to be a partner of a firm of lawyers or Solicitors it will be incumbent on the firm not to take up any case against the Government of India in Calcutta High Court or any case arising in other Courts out of those cases e.g. appeals and revisions in the High Court or the Supreme Court.

XIII. GENERAL:

1. The various terms used in this Scheme will have the following meaning;

(a) Effective Hearing: 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 directions are given or only judgement is delivered

the Court, it would not constitute an effective hearing. It would constitute non-effective hearing.

(b) Uncontested Cases: All suits and appeals are to be 'uncontested', if these are withdrawn by the plaintiff/appellant or are dismissed in limine or are otherwise decided by the Court, or after the final hearing. No writ petition/revision petition/second appeal (including any interlocutory application connected therewith) will be considered as 'uncontested' if it is decided by the Court on preliminary legal objections or is withdrawn by the petitioner/appellant at or during any stage of the final hearing in the presence of the Government or is withdrawn by the Government at the time of its admission.

(c) Identical Cases: Two or more cases on which substantially identical questions of law or facts are involved and where the main difference is in the names, addresses of the parties concerned, amount of money involved etc. where the common or identical judgements are delivered irrespective of the fact whether all the cases are heard together or not.

2. In all cases, effective appearance is necessary for the Counsel to claim fee.

3. No fee will be payable in cases where no legal work is required to be done e.g. cases in which the interests of the Government of India are to be watched pending instructions, cases regarding transmission of record to the Supreme Court, inspection of the Court record for ascertaining the position of the case or other information needed.

4. No fee will be admissible for preparation but the Government may consider payment of a separate fee for preparation in special cases involving arduous work.

5. If the Counsel appears at the instance of the Union of India for parties other than the Union of India whose case is not inconsistent with that of the Union of India, he will be entitled to only one set of fee.

6. Appeals, revision or petitions arising from one common judgement or order will be together considered as one case, if they are heard together.

7. When cases argued before a Single Judge are referred to a Division Bench or to a Full Bench separate fee at the prescribed rates will be paid for appearance before each Bench.

8. In 'uncontested cases' the fee shall be one-third of the fees otherwise payable but if such a case is later on restored and decided in contest, the remaining two-thirds of the fee will be payable. A case shall be regarded as 'contested' when a decision is given after both sides.

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2. *or duty of the court is to deliver judgment on the merits of the case. It would not constitute an effective, but will be termed as non-effective hearing.*

10. Where two or more cases (but not more than 10 cases) involving substantially identical questions of law or facts, any one of such cases will be treated as a main case and the others as connected cases and the fees in such cases will be regulated as under, irrespective of the fact whether all the cases are heard together or not:-

(a) when the Counsel files 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 other cases are decided accordingly, the Counsel shall pay the full fee in the main case and Rs.50/- in each of the connected cases.

(b) when the main case has been contested as in (a) above but in the connected cases either affidavit or grounds of appeal or petition similar to the one in the main case or nothing at all has been drafted by the Counsel, he shall pay the full fee in the main case and Rs.25/- only in each of the connected cases.

(c) when substantially different affidavits are drafted in each connected case but all the cases are disposed of without contest, the Counsel shall get 1/3rd fees in the main case and Rs.50/- in each of the connected cases.

(d) when the Counsel has drafted the affidavit, petition grounds of appeal in the main case and has not drafted the in the connected cases are substantially similar to the one in the main case and the cases are disposed of without contest, the Counsel shall get 1/3rd fee in the main case and Rs.25/- in each of the connected cases.

11. The fee to the Counsel will be paid by the Department of Legal Affairs, Min. of Law and Justice, on presentation of a stamped receipt, and on submission of a copy of the document drafted, if it is a drafting fee, and submission of minutes or gist of proceedings, or a copy of order/judgement where it is necessary in case the claim is for appearance fee. The Counsel shall submit his fee bills within three months from the date on which the fee has accrued.

* 12. As regards admissibility and quantum of fee in such cases, the decision of the Officer-in-Charge of the Branch Secretariat of the Department of Legal Affairs, Bombay shall be final.

.....7/-

2(1)/87-Judl.
Department of India
Ministry of Law and Justice
Department of Legal Affairs
(Judicial Section)

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* 12. As regards admissibility and quantum of fee in such cases, the decision of the Officer-in-Charge of the Branch Secretariat of the Department of Legal Affairs, Bombay shall be final.

.....7/-

1. All Panel Counsel
Calcutta High Court

Ministry of Law and Justice
Department of Legal Affairs
(Judicial Section)

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Revised Scheme containing terms and conditions for the engagement of Special Panel Counsel, Senior Counsel Group I, Senior Counsel Group II and Junior Counsel/Advocate on Record in respect of Civil Litigation and such Criminal Cases as may be entrusted to them in the Calcutta High Court, effective from 1st April, 1987.

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I. SCOPE OF THE SCHEME:

1. The Scheme will be operative in respect of all the civil litigation cases and such criminal cases on behalf of the Government of India as may be entrusted to the Counsel in the Calcutta High Court.
2. Incharge of Litigation Cases: The Officer incharge of the Branch Secretariat of the Department of Legal Affairs, Calcutta, will be incharge of the entire litigation work on behalf of the Government of India before the Calcutta High Court, except such of the work for which separate arrangements have been made.
3. Allocation of cases to the Counsel: Allocation of cases to the Counsel will be made by the Officer incharge of the Branch Secretariat of the Department of Legal Affairs at Calcutta, or any other Officer authorised by him in this regard.

II. DEFINITIONS:

1. For the purpose of this Scheme, the expressions:
 - (a) 'Counsel' will mean and include the Special Panel Counsel, Senior Counsel Group I, Senior Counsel Group II and Junior Counsel/Advocate on Record.
 - (b) 'Government of India' means and includes the Government of India and also the Government of a Union Territory;
 - (c) 'Law Officer' means and includes the Attorney General for India, the Solicitor-General for India, and Additional Solicitors-General for India.

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III. PAM

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5. If any difference or doubt arises in respect of fee or other bills claimed by the Counsel, the matter may be referred to the Law Secretary whose decision shall be final.

H.N. Poddar
(H.N. Poddar)
Solicitor.

Copy forwarded to:

1. All Ministries/Departments to the Govt. of India.
2. All Special Panel Counsel, Senior Counsel (Group I/Group II) and Junior Counsel/Advocate on record in Calcutta High Court through Branch Secretariat Calcutta.
3. Department of Expenditure, Ministry of Finance, New Delhi, w.r.t. their D.C. letter No. 6(11)/M.D.1/86 dated 4.9.85.
4. Legal Adviser, Railway Board, New Delhi (with 5 s/copies)
5. Department of Personnel & Trg. (AT Section), New Delhi (with 5 s/copies)
6. Joint Secretary (Legal), Department of Revenue, Ministry of Finance, New Delhi (with 5 s/copies).
7. CDD, Department of Revenue, Ministry of Finance, New Delhi (with 5 s/copies)
8. Branch Secretariats Bombay/Calcutta/Madras/Bangalore.
9. Central Agency Section, i.e. (PS/LC) Section/Cash/Adm. II(LA) B&A/Advice A/B/C Sections.
10. Pay and Accounts Officer, Department of Legal Affairs, New Delhi.
11. Guard File/Judicial Section (with 200 s/copies).

H.K. Narula
(H.K. Narula)
Section Officer.

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III. PANELS OF COUNSEL:

1. Special Panel Counsel, Senior Counsel Group I, Senior Counsel Group II and Junior Counsel/Advocate on Record;

There will be Panels of Counsel consisting of Special Panel Counsel, Senior Counsel Group I, Senior Counsel Group II and Junior Counsel/Advocate on Record to conduct the litigation cases on behalf of the Government of India before the Calcutta High Court at Calcutta. The strength of the Counsel empanelled may be determined by the Government of India from time to time.

IV. TERM OF APPOINTMENT/EMANELMENT:

1. Initial/further appointment/empanelment: The term of appointment/empanelment of the Counsel would be for a period of one year in the first instance, which may be extended for a further term not exceeding three years, at the discretion of the Government of India.
2. Termination of appointment/empanelment: The appointment/empanelment of the Counsel would be terminable on one month's notice in writing on either side.

V. HEADQUARTERS OF THE COUNSEL:

1. Headquarters at Calcutta: The Counsel may locate his headquarters during the period of his appointment/empanelment as such, at Calcutta.

VI. DUTIES:

1. The Counsel shall:
 - (i) appear in Calcutta High Court in the cases marked to him by the Officer Incharge of the Branch Secretariat, Department of Legal Affairs, Calcutta, or any other Officer authorised by him in this regard;
 - (ii) if so required, appear in the District and Subordinate Courts, Tribunals, Commissions of Inquiry, before the Arbitrators/Umpires etc. at the headquarters/outside the headquarters;
 - (iii) when any case attended to by him is decided against the Government of India and/or its officers, give his opinion regarding the advisability of filing an appeal from such a decision;
 - (iv) render all assistance to the Law Officers, Advocate General of the State Government, Special or Senior Counsel, if required to do so, who may be engaged in a particular case before the High Court.

Commissions of Inquiry, before the Arbitrators/
Umpires etc.;

Keep the Officer Incharge of the Branch Secretariat, Calcutta, informed of the important developments in the case from time to time, particularly with regard to drafting, filing of papers, dates of hearing of the case, supplying copies of judgements etc.;

- (vi) furnish to the Branch Secretariat, Calcutta and the Department of Legal Affairs periodical statements and reports/returns, which may be called for by the Ministry of Law and Justice, Department of Legal Affairs, from time to time;
- (vii) render detailed account of the advance in the form of out of pocket expenses to the Officer Incharge of the Branch Secretariat, Calcutta; and
- (viii) perform such other duties of a legal nature which may be assigned to him by the Department of Legal Affairs, Ministry of Law and Justice, from time to time.

VII. RETAINER AND OTHER PERQUISITES:

The Counsel will not be entitled to the payment of a monthly retainer or to any other perquisites.

VIII. FEE PAYABLE TO THE COUNSEL:

1. The fees payable to the Counsel in the Calcutta High Court would be at the rates as indicated in Annexure I, which have already been made effective from 1.10.85.

When the Counsel does not argue the case himself but only assists the Law Officer, Advocate General of the State Government or other Special/Senior Counsel, he will be entitled to the same fees as are payable to him deeming that he has appeared and argued the case himself.

IX. OUT OF HEADQUARTERS:

1. If the Counsel is required to go out of headquarters in connection with Central Government litigation e.g. for conference with a Law Officer, Advocate General of the State Government or with a Senior Counsel, appearance in a Court outside the headquarters, he will be entitled to a daily fee to be decided by the Department of Legal Affairs on the basis of per day of appearance for the days of his absence from the headquarters including the days of departure from, intervening holidays and arrival back at the headquarters, but no fee will be paid for the day of departure if he leaves the headquarters after Court hours or for the day of arrival if he arrives at

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side or by both and if thereafter the Court adjourns the matter, that will be an effective hearing because the case in any event is to be adjourned after hearing from time to time till it is finally disposed of. Further the effective hearing should not be interpreted to mean final hearing because final hearing takes place only once and not from time to time.

If a case is mentioned and adjourned (which means the Counsel has not to wait till the matter is called in its turn) and if the Court gives only directions and if the Court delivers judgement, they will not be effective hearings.

Ministry of Environment and Forests, etc. are requested to bring these decisions/clarifications to the notice of all concerned.

(D.R. MEENA)

Joint Secretary & Legal Adviser to the Government of India

Copy to :-

1. All Ministries/Departments to the Government of India.
2. All Senior C.G.S.C./Additional C.G.S.C. in Delhi High Court and various High Courts.
3. All Senior C.G.S.C./Additional C.G.S.C. in Karnataka High Court/Madras High Court.
4. All Senior C.G.S.C./Additional C.G.S.C. in CAT, Delhi.
5. Incharge, Branch Secretariats - Mumbai, Calcutta, Bangalore & Madras.
6. Incharge, Litigation (HC) Section.
7. Incharge, Central Agency Section.
8. Central Agency Section, Litigation (HC) Section.
9. Guard File, Judicial Section (with 10 s/copies).
10. OL Section for Hindi translation.

(D.R. MEENA)

Joint Secretary & Legal Adviser to the Government of India

(37)

Continuous 6 days - 1 fee
4 days - 2 fees
5 days - 3 fees
6 days - 5 fees

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entitled to two days' refresher fee, if the hearing in a case goes on for six days continuously, the Counsel is entitled to three days' refresher fee.

6. Misc. Applications :-

Terms and conditions provide for a fee of Rs. 300/- per petition in Civil Misc. petitions, Forma Pauperis, Transfer Petitions and other Civil Misc. Petitions/ Applications not otherwise provided for. It is clarified that for drafting and conducting Misc. Applications e.g. stay application, application for exemption from filing certified copies, condonation of delay, early hearing and urgent application, the Counsel is entitled to Rs. 300/- per application.

7. Daily fee for going out of headquarters and appearance fee :-

Sometimes doubts are raised as to whether daily fee is in addition to the appearance fee or it includes appearance fee. It is, hereby, clarified that the daily fee is to be paid in addition to the appearance fee.

8. Regulation fees :-

Terms and conditions of engagement of Counsel in various High Courts provide that in original suits and Civil Appeals from decrees in original suits and proceedings (except under Articles 226 and 227 of the Constitution), 2nd Appeal, LPA (other than those mentioned in Item (i) of the schedule of fee) and Land Revenue Appeals in the High Courts, the Counsel will be paid regulation fee. It is hereby clarified that the regulation fee is the fee prescribed in the concerned High Court Rules for such items.

In respect of Senior Panel Counsel :-

9. Effective and non-effective hearings :-

Though the terms and conditions define effective and non-effective hearings, these may further be clarified as under :-

If the matter is called in its turn and the Counsel is present to represent the Department and the Court listens to the submissions made by him, or by other

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10. Where two or more cases (but not more than 10 cases) involving substantially identical questions of law or fact, any one of such cases will be treated as a main case and the others as connected cases and the fees in such cases will be regulated as under, irrespective of the fact whether all the cases are heard together or not: -

(a) when the Counsel files 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.50/- in each of the connected cases.

(b) when the main case has been contested as in (a) above, but in the connected cases either affidavit or grounds of 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.25/- only in each of the connected cases.

(c) when substantially different affidavits are drafted in each connected case but all the cases are disposed of without contest, the Counsel shall get 1/3rd fees in the main case and Rs.50/- in each of the connected cases.

(d) when the Counsel has drafted the affidavit, petition grounds of appeal in the main case and has not drafted the same in the connected cases are substantially similar to the one in the main case and the cases are disposed of without contest, the Counsel shall get 1/3rd fee in the main case and Rs.25/- in each of the connected cases.

11. The fee to the Counsel will be paid by the Department of Legal Affairs, Min. of Law and Justice, on presentation of a stamped receipt, and on submission of a copy of the document drafted, if it is a drafting fee, and submission of minutes, gist of proceedings, or a copy of order/judgement where it is necessary in case the claim is for appearance fee. The Counsel shall submit his fee bills within three months from the date on which the fee has accrued.

12. As regards admissibility and quantum of fee in such cases, the decision of the Officer-in-Charge of the Branch Secretariat of the Department of Legal Affairs, Bombay shall be final.

.....?/-

F.No. 22(3)/2001-Judl.
Government of India
Ministry of Law, Justice & Company Affairs
Department of Legal Affairs

New Delhi, the 22nd June, 2001

CONVULSION

1. ~~In this Department's O.M. of even number dated 14th May, 2001,~~ regarding revision of fee payable to Special Counsel/Senior Panel Counsel Group I, Senior Panel Counsel Group II and Junior Counsel in the Calcutta High Court, Kolkata:

- (i) for the words 'dated 05.05 87', wherever occurring, read the words 'dated 05.06.1987'.
- (ii) After the part (d) of Para 1 and contents thereof, add the following:
- (e) Term X of the Scheme of Terms and conditions shall be substituted by the following, namely :-

X. CLERKAGE :

In addition to the fee, the Counsel will be entitled to 10% of fees subject to a maximum of Rs.1,800/- in a case or batch of cases by way of Clerkage.

2. In Annexure to this Department's O.M. of even number dated 14th May, 2001, under the heading 'Nomenclature':

- (i) in item 1, after the words 'in the High Court', insert the words '(per day per effective hearing)'.
- (ii) in item 4, for the words 'before Arbitrator and Tribunal', read the words 'before Arbitrator and Tribunals (except CAT)'.

(B. R. MEENA)

Joint Secretary & Legal Adviser to the Government of India

Copy forwarded to :-

1. All Ministries/Departments to the Government of India.
2. All Panel Counsel in the Calcutta High Court (through Branch Secretariat, Department of Legal Affairs, Kolkata)
3. Department of Expenditure, Ministry of Finance, New Delhi.
1. Legal Adviser, Railway Board, New Delhi (with 5 s/copies),
Joint Secretary (Legal), Department of Revenue, Ministry of Finance, New Delhi (with 5 s/copies).
CML, Department of Revenue, Ministry of Finance, New Delhi (with 5 s/copies).
Branch Secretariats - Mumbai/Kolkata/Chennai/Bangalore.
Central Agency Section, Litigation (HC/LC) Section, Cash Section, B&A, Advice A/D/C Sections.
Pay and Accounts Officer, Department of Legal Affairs, New Delhi.
Guard File/Judicial Section (with 250 s/copies)

(S. K. KALHA)