

F.No.33(1)/2000-Judl.  
Government of India  
Ministry of Law, Justice & Co. Affairs  
Department of Legal Affairs  
Judicial Section  
.....

New Delhi, the 11th September, 2000

OFFICE MEMORANDUM

Subject : Revision of fee payable to Senior Counsel/Central Government Standing Counsel in various High Courts - Clarifications reg.

.....

The undersigned is directed to refer to this Department's O.M. No. 24(2)/99-Judl., O.M. No.26(1)/99-Judl., O.M. No.26(2)/99-Judl. and O.M. No.25(3)/99-Judl., all dated 24th September, 1999 regarding revision of fee payable to Senior Counsel/Central Government Standing Counsel in Delhi High Court, various High Courts, Karnataka High Court and Madras High Court respectively and to state that certain doubts have been raised by some departments. The doubts have been examined by the Government and the following decisions have been taken :-

1. Proforma Party :-

(i) In a case where Union of India is only a proforma party and no instructions from the concerned department are given to the Counsel and the Counsel continues to appear in the matter, the Counsel is entitled to 1/3rd fee. Even if such a case is disposed of at admission stage, the Counsel is entitled to 1/3rd fee.

(ii) In such cases where the Administrative Department informs the Counsel/concerned Litigation Section not to contest the case on their behalf, then the Counsel is not entitled to any fee.

2. Cases disposed of at the admission stage (where the Department is one of the main respondents) :-

(i) Where the case is disposed of or dismissed at the admission stage and the Department has no notice of the case and no instructions are given to the Counsel, the Counsel may be paid 1/3rd fee.

(ii) In such a case where the Department has notice of the case and instructions are given to the Counsel and/or some reply is also filed and the Counsel gets the case disposed of/dismissed at the admission stage, the Counsel may be paid full fee.



3. In identical cases where more than 10 cases are involved :-

Where more than ten identical cases are involved, groups of ten cases each may be made treating one case in each group as the main case and the other nine cases in each group as connected cases and pay the fee to the Counsel as per term XIII-10 of the terms and conditions of engagement of Counsel of Delhi High Court and other similar terms of engagement of Counsel in various High Courts.

4. Misc./out of pocket expenses :-

In para 2(d) of this Department's O.M. Nos.26(1)/99-Judl., 24(2)/99-Judl. and 26(2)/99-Judl. dated 24th September, 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. The misc. expenses are in addition to the clerkage.

5. Refresher fee :-

The terms and conditions provide that if in a case, hearing on a Writ Petition goes on for more than three days, an additional fee of Rs.375/450.00 per day (not exceeding three in number) may be paid by way of refresher fee. From the above wording, it follows that refresher fee is to be paid when hearing on a case is continuously held for more than three consecutive days. In other words, if hearings in the case are held on different dates, the Counsel is not entitled to refresher fee. To put it more clearly, it may be stated that if hearing in a case is held continuously for four days, the Counsel is entitled to one day's refresher fee, if the hearing is held continuously for five days, the Counsel is



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 Acquisition 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



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/clerifications 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