

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
DEPARTMENT OF LEGAL AFFAIRS

Rajya Sabha

Unstarred Question No. 2017

TO BE ANSWERED ON 05.12.2019

Internal Commercial Disputes Redressal Mechanism

2017. SHRI DEREK O'BRIEN:

Will the Minister of LAW AND JUSTICE be pleased to state:

- (a) the details of the current internal mechanism in force to deal with commercial disputes between Ministries, Departments and PSUs;
- (b) the success of the mechanism in discouraging Court litigation; and
- (c) the details thereof since the year of its inception?

ANSWER

**MINISTER OF LAW AND JUSTICE, COMMUNICATIONS AND ELECTRONICS &
INFORMATION TECHNOLOGY**

(SHRI RAVI SHANKAR PRASAD)

(a) As far as commercial disputes pertaining to Central Public Sector Enterprises (CPSEs) with other government entities are concerned, Department of Public Enterprises (DPE) has issued guidelines on Administrative Mechanism for Resolution of Commercial Dispute (AMRCD) which *inter alia* provide for a two tier mechanism for dispute resolution vide O.M. dated 22.5.2018(copy annexed as annexure).

Under this mechanism of AMRCD, the dispute resolution falls within the domain of the concerned administrative Ministries/Departments to which the disputing CPSEs/Parties belong. The Secretaries of respective Ministries/departments of the disputing parties and Secretary, Legal Affairs are members of the AMRCD mechanism at the first level of dispute resolution and appeals, if any, are to be decided at the second level by the Cabinet Secretary.

(b) & (c) The AMRCD guidelines provide for inclusion of an enabling '*arbitration clause*' in all the commercial contracts signed by CPSEs with other Government entities making it binding that any dispute by either parties to the contract will be taken up for resolution only through AMRCD mechanism. Further, the decisions arising out of the AMRCD mechanism are binding on the concerned parties to comply with the same. To this extent, it curtails the scope for any litigation as far as CPSEs are concerned. However, there is no such centralized data is available of the disputes handled by AMRCD since its inception.

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F. No. 4(1)/2013-DPE(GM)/FTS-1835
Government of India
Ministry of Heavy Industries & Public Enterprises
Department of Public Enterprises

Public Enterprises Bhawan,
Block No. 14, CGO Complex,
Lodhi Road, New Delhi-110003.
Dated: 22nd May, 2018

OFFICE MEMORANDUM

Subject: Settlement of commercial disputes between Central Public Sector Enterprises (CPSEs) *inter se* and CPSE(s) and Government Department(s)/Organization(s) - Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD).

The undersigned is directed to refer to Department of Public Enterprises guidelines issued vide OM No. 4(1)/2011-DPE (PMA)-GL dated 12.06.2013, No.4(1)/2011-DPE(PMA) dated 24.03.2014, No. 4(1)/2011-DPE (PMA) dated 26.03.2014 and No. 4(1)/2013-DPE(PMA)/FTS-1835 dated 11-04-2017 regarding the resolution of commercial disputes between Central Public Sector Enterprises (CPSEs) *inter se* and also between CPSEs and Government Departments/Organizations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments) through PMA (Permanent Machinery of Arbitration) mechanism.

2. To make the mechanism more effective and binding on the disputing parties, a new mechanism namely Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) having two level (tier) structure has been evolved in consultation with various stakeholders to replace the existing PMA mechanism which stands wound up from the date of issue of this OM.

3. Applicability

In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs)/ Port Trusts *inter se* and also between CPSEs and Government Departments/Organizations (excluding disputes concerning Railways,

Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for its resolution through AMRCD.

4. As per the approved new mechanism to resolve the commercial disputes, the
- following structure and procedure shall be followed by the concerned disputing parties:

A. Structure:

- i. At the First level (tier), such commercial disputes shall be referred to a Committee comprising of Secretaries of the Administrative Ministries/Departments to which the disputing CPSEs/Parties belong and Secretary-D/o Legal Affairs. The Financial Advisors (FAs) of the two concerned Administrative Ministries/Departments will represent the issues related to the dispute in question before the above Committee. In case the two disputing parties belong to the same Ministry/Department, the above said Committee will comprise Secretary of the administrative Ministry/Department concerned, Secretary-D/o Legal Affairs and Secretary-Department of Public Enterprises. In such a case, the matter may be represented before the Committee by the FA and one Joint Secretary of that Ministry/Department.

Further, in case of a dispute between CPSE and State Government Department/organization, the above said Committee will comprise the Secretary of the Ministry/Department of the Union to which the CPSE belongs and Secretary-D/o Legal Affairs and a senior officer nominated by the Chief Secretary of the State concerned. In such a case, the matter will be represented before the Committee by the FA of the concerned administrative Ministry/Department and the concerned Principal Secretary of the State Government Department/ Organisation.

- ii. In case the dispute remains unresolved even after consideration by the above Committee, the same will be referred at the Second level (tier) to the Cabinet Secretary, whose decision will be final and binding on all concerned.

B. Procedure:

- i. At the First level(tier), the claiming party(Claimant) will approach the FA of it's administrative Ministry/Department for representing the dispute before the Secretary of it's administrative Ministry/Department. The Secretary of administrative Ministry/Department of claiming party will intimate the same to the Secretary of administrative Ministry/Department of responding party (Respondent) and Secretary-D/o Legal Affairs and thereafter meetings will take place in the administrative Ministry/Department of the claiming party to examine the facts and resolve the dispute on merit. The FAs of the concerned administrative Ministries/Departments will represent the issues related to the dispute in question before the above Committee. After arriving at a decision by the Committee, the Secretary of the administrative Ministry/Department of the claiming party will write down the decision and it will be signed jointly by both the Secretaries and Secretary- D/o Legal Affairs. A copy of the decision will be communicated by the Secretary of the administrative Ministry/Department of the claiming party to each party to the dispute for implementation.

In case where one party (1st party) to the dispute is a Department/organization of a State Government, the procedure for admitting the dispute will be same as above, however, all meetings in connection with resolution of the dispute will be held in the administrative Ministry/Department (Union) of other party(2nd Party) irrespective of the position of the 1st Party whether as a Claimant or Respondent. The presentation of the issues before the above Committee in this case will be done by the FA of the concerned Administrative Ministry/Department and concerned Principal Secretary of the State Government Department/organization.

- ii. The Committee of Secretaries at the First level(tier) shall finalise its decision within 3 months after having received the référence/notice in writing regarding the dispute from the concerned aggrieved party.

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5. Appeal

Any party aggrieved with the decision of the Committee at the First level (tier) may prefer an appeal before the Cabinet Secretary at the Second level (tier) within 15 days from the date of receipt of decision of the Committee at First level, through it's administrative Ministry/Department, whose decision will be final and binding on all concerned.

6. Arbitration Clause

- (i) The CPSEs will ensure inclusion of a clause in all the existing and future commercial contracts between CPSEs, *inter-se* and CPSEs and Government Departments/organizations as under:-

“In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs)/ Port Trusts inter se and also between CPSEs and Government Departments/Organizations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22-05-2018”.

- (ii) The on-going contracts shall also be suitably amended accordingly.

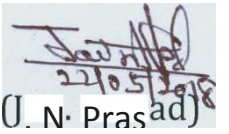
7. Disposal of pending cases in PMA

All pending cases with Sole Arbitrator-PMA and Appellate Authority shall stand transferred with immediate effect to concerned administrative Ministries/Departments to be dealt with as per above mentioned laid down mechanism of dispute resolution. All cases in which the hearing has been completed

by Sole Arbitrator, the award will be made by Sole Arbitrator. Appeal if any, made against such cases will lie with the Cabinet Secretary at Second level(tier).

8. All the administrative Ministries/Departments concerned with Central Public Sector Enterprises/ Port Trusts etc. are requested to bring these guidelines to the notice of all CPSEs under their administrative control for strict compliance.

9. This issues with the approval of the Competent Authority.



22/05/2018
(J. N. Prasad)

Director
Tel. 24360736

To.

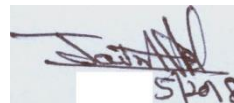
1. Secretary of all Ministries/Departments of the Government of India.
2. Chief Secretary of all the States and Union Territories.

Copy to:

1. Sh. G.S. Yadav, Joint Secretary & Arbitrator-PMA, DPE.
2. Chief Executive of all CPSEs for information and necessary compliance.

Coov forwarded for kind information to:

- (i) The Prime Minister's Office, South Block, New Delhi.
- (ii) The Cabinet Secretariat, Rashtrapati Bhawan, New Delhi.
- (iii) PS to the Minister (HI&PE), Udyog Bhawan, New Delhi.
- (iv) Secretary(DPE), CGO Complex, New Delhi
- (v) Secretary (Law), D/o Legal Affairs, Shastri Bhawan, New Delhi.

A handwritten signature in dark ink, appearing to be 'J. N. Prasad', is written over a light blue rectangular background. Below the signature, the date '5/10/8' is handwritten.

(J. N. Prasad)
Director Tel. 24360736