



Foreword

This Compendium of instructions on Arbitration is issued for guidance of officials dealing with the subject matter. It contains relevant administrative orders/circulars/letters issued by Railway Board and Northern Railway from time to time.

The Compendium consists of 19 annexures related to Arbitration policy. All the annexures have been typed for sake of clarity instead of xeroxing the old circulars. Though every effort has been made to avoid typographical mistakes, it is quite possible that some such errors might have crept in. It is advised that the officials using this compendium do not quote it and refer to the original letter/circular for such purposes. Moreover, these circulars/letters should be read in conjunction with relevant clauses of General Conditions of Contract - 1999 and Arbitration Act - 1996.

The documentation has been painstakingly done by Sh. V.K.Gupta, Dy.CE/G and Sh. Rajeev Saxena, AXEN/G and their staff under the guidance of Sh.Y.P.Singh, CE/G. Their efforts are praise worthy.

It is hoped that the officials dealing with the Arbitration matters will find the compendium useful. Suggestions for improvement are welcome.

Deepak Krishan
Principal Chief Engineer
Northern Railway
Baroda House
New Delhi.



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“ARBITRATE, DON’T LITIGATE”

ANNEXURE-1

Letter No.95/CE.I/CT/24 dated 13-04-05 from EDCE(G), Railway Board, New Delhi to All GMs/Indian Railways.

Sub: Vigilance clearance of retired railway officers for empanelment as arbitrators.

At present retired Railway officers who are willing to act as arbitrator are applying for Vigilance Clearance from different railways separately for empanelment as arbitrator. This is causing unnecessary paperwork. It has, therefore, been decided that henceforth once a vigilance clearance is issued by Board for a particular officer in reference to their application, from any one of the zonal railways/Production Units, it would be valid for entire Indian Railway till any further communication is made for withdrawing the vigilance clearance so given earlier.

Each Railway shall keep a watch on the conduct of the retired Railway officer as an arbitrator and advise the Railway Board of any misconduct on the part of the officer and the action taken against the officer concerned so that other Railways could be advised of the same.

Retired empanelled Arbitrators may also be advised to submit Quarterly progress report indicating the number of cases pending with them & progress thereof.

**Sd/-
PARMOD KUMAR
Exec. Director, Civil Engineer (G)
Railway Board.**



ANNEXURE-2

Letter No.95/CE./CT/24 dated 12-1-2004 from EDCE(G), Railway Board.

Sub: Appointment of Retired Railway Officers as Arbitrators.

Ref: Board's letter No.95/CE./CT/24 dated 14-11-96.

In continuation of Board's letter of even number dated 14-11-96 Board have further decided on the fee payable for retired railway officers for working as arbitrator.

Guidelines for appointment of retired railway officers as arbitrators and fees payable to them are enclosed as Annexure – A. The earlier instructions issued on the subject vide Board's letter referred to above, are also enclosed as Annexure – B.

This issues with the concurrence of Finance Directorate of the Ministry of Railways.

Encl: As above.

**Sd/-
PARMOD KUMAR
Exec. Director, Civil Engineer (G)
Railway Board.**

Annexure – 'A'

Guidelines for appointing the Retired Railway Officer(s) as Arbitrator(s) and fee payable to.

1. A panel of arbitrators shall be drawn up by the concerned Zonal Railway after obtaining vigilance clearance from Railway Board. Since in all arbitration cases having three or more members, one member will be from Finance and most of the arbitration cases are from Civil Engineering Department, larger panels of Finance and Civil Engineering officers should be formed. The panel should be reviewed every year by G.M. in consultation with Railway Board Vigilance and names added/deleted as necessary.



2. Out of 3 or more arbitrators, not more than one arbitrator should be a retired railway officer (retired not below the rank of SAG), age not exceeding 70 years and in reasonably good mental and physical fitness. The presiding arbitrator should be a serving railway officer.
3. Retired railway officer while working as an arbitrator will be entitled for a fee not exceeding 1% of the total claims, including the counter-claims subject to maximum of Rs.50,000/- per case. This would include the conveyance charges from the residence of the arbitrator to the place of hearing, if it happens to be in the same city where the retired railway officer (appointed arbitrator) resides.
4. Clerical and stenographic assistance, including stationery shall be provided by the Railway. However, if the arbitrator brings his own Steno and does not ask for any assistance, he/she can be paid an honorarium up to 10 per cent of the fee of one arbitrator subject to a minimum of Rs.500/- per case and cost of stationery as per actuals.
5. The fees proposed for arbitration and the honorarium for clerical/stenographic assistance may be reviewed every 3 years. The review will be done by Railway Board.
6. The claimant and the respondent would share all the cost of arbitration equally.
7. All other clauses/conditions would be the same, as already agreed by the Board and circulated to Railways vide Board's letter No.95/CE.I/CT/24 dated 14-11-1996 (copy enclosed).



ANNEXURE-3

Letter No.95/CE-I/CT/24 dated 14-11-96 from EDCE(G), Railway Board to all GMs, CAO/Cs,

Sub: Appointment of retired Railway Officers as Arbitrators.

In connection with the above subject, Board have decided that only when the number of Arbitrators is 3 or more, one of the Arbitrators can be a retired Railway Officer. Only Retired Officers with impeccable reputation, and clear from Vigilance angle and who have retired in SA grade and above should be appointed as Arbitrators.

Guidelines for appointment of retired Railway Officers as Arbitrators and other conditions are enclosed as Annexure-I.

Annexure-I

Guidelines for appointment of retired Railway Officers as Arbitrators and other conditions.

1. Railways should call for applications from retired SA Grade Officers who are willing to work as Arbitrators for appointment.
2. A panel of Arbitrators shall be drawn up by the concerned Zonal Railway after obtaining vigilance clearance from Railway Board. Since in all arbitration cases having three or more members, one member will be from Finance and since most of the arbitration cases are from Civil Engineering Department, larger panels of Finance and Civil Engineering Officers should be formed. Similar panels may be formed for Mechanical, S&T, Electrical and Stores Department Officers who have dealt with contract matters during their service tenure. The panel should be reviewed every year by G.M. in consultation with Railway Board Vigilance and names added/deleted as necessary.
3. For the retired officer, normal TA/DA would be admissible for any visits that the arbitrator/arbitrators may undertake for site inspection etc. The Railway should provide the class of Pass for which the officer was entitled before retirement. They will also be entitled to TA/DA as per their position



- prior to retirement. The arbitrator should also be entitled to rest house and official vehicle when visiting outstations as on duty.
4. For arbitration proceedings, Railway shall make available necessary accommodation along with furniture and telephone on the dates of hearings.
 5. Normally an arbitration award must be given within 4 months from the date of first hearing. However, for claims exceeding Rs.50 lakhs, a period upto one year may be permitted.
 6. At a time, not more than 3 arbitration cases should be given to one retired officer.
 7. The arbitrator shall maintain strict secrecy in relation to the documents and information received by him regarding the case in question and shall return records, reports etc. received during the arbitration proceedings to the competent authority at the time of submission of the award.
 8. G.M. will keep watch on the performance of the arbitrator and if the G.M. finds that the arbitrator does not appear to be fair, he may consider deleting the arbitrator's name from the panel for the subsequent period.
 9. Once an Arbitrator is appointed by the government Authority, the mandate of the arbitrator can be terminated and arbitrator substituted by another, as per Clause 15 of the Arbitration and conciliation Ordinance, 1996.



ANNEXURE-4

Letter No.2003/CEI/CT/5 dated 14-2-2005 from EDCE(G), Railway Board to All GMs, Pr.CEs & CAO/Cs of Indian Railways.

Sub: Disposal of Arbitration cases consequent to creation of new zones.

Ref: Board's letter of even number dated 2-7-2003, 31-12-2003 and 18-8-2004.

Please refer to above mentioned letters wherein methodology to deal with the arbitration cases pending on the date of creation/bifurcation of new zones was advised. However, one of the Railways has brought to the notice of the Railway Board about the problem being faced by them. It is regarding an arbitration case pertaining to a division which has gone in the jurisdiction of new zone. In this case, the arbitration has been completed by the parent zone and the arbitration award has also been published by them but the new zone is insisting that the award should be accepted and satisfied by the parent zone.

2.0 The matter has been reviewed in the Board carefully and it is decided that in cases where the contracts were operated by the Divisions / field units of the Construction Organization and now have come under the jurisdiction of new zones, the arbitration award will be published by the parent railway but its acceptance and payment as a result of the award including any court case / litigation etc. would be dealt by the New Zone.

3.0 In cases where contracts were operated in the headquarters, the total action as narrated above would be taken by the parent zone only.

4.0 The above instructions would be applicable with prospective effect.

5.0 The extant instructions issued vide Board letter of even number dated 2-7-2003 are superceded. The rest of the instructions as contained in Board's letters of even number dated 18-8-2004 and 31-12-2003 would be applicable.

This issues with the approval of Board (ME).

**Sd/-
PARMOD KUMAR
Exec. Director, Civil Engineer (G)
Railway Board.**



ANNEXURE-5

Letter No.2003/CE-I/CT/5/PT.I dated 18-8-2004 from EDCE(G), Railway Board

Sub: Disposal of arbitration cases consequent of bifurcation of new zones.

Ref: Board's letter of even number dated 31-12-2003.

Vide Board's letter referred to above, it was decided that all those cases where arbitrators have been appointed by the parent zones and already had at least one hearing should be dealt with the parent zones only. Rest of the cases should be transferred to the new zones.

A doubt has been raised by one of the Railway where the hearing has been held by the new zone after bifurcation of his zone as to who should deal with this case. The instructions issued vide Board's letter under reference are to be made applicable to all cases which were existing on the date of bifurcation with the position of appointment of arbitrators and hearing as on 31-12-2003 i.e. the issue of the above referred Board's letter.

It has further been decided by the Board that Railways are free to adopt their own mutually agreed procedure if all the concerned parties (i.e. parent Railway and the new formed zones from that Railway) are satisfied.

This disposes the reference of Eastern Railway also made vide their letter No.CE/Con/WT/ARBN/Handing Over/ECR dated 30-6-2004. Eastern Railway have already drawn a Joint Procedure of Order (JPO) and there is no objection to the Board to continue to deal with the arbitration cases as per JPO.

**Sd/-
PARMOD KUMAR
Exec. Director, Civil Engineer (G)
Railway Board.**



ANNEXURE-6

Letter No.2003/CE.ICT/5 Pt.1 dated 31-12-2003 from EDCE(G), Railway Board to All GMs.

Sub: Disposal of Arbitration cases (of new zones).

Ref: Board's letter of even number dated 2-7-03.

After issue of the policy in regard to disposal of the arbitration cases arising out before bifurcation of old zones, many references have been received from the parent / old zones, citing out various problems in dealing with the arbitration cases for the portion already transferred under the jurisdiction of new zones.

The matter has since been reviewed and Board (ME) has now decided that the cases where arbitrators have been appointed by the parent zones, and have already held at least one hearing, should be dealt with by the parent zones only. The other cases would stand transferred to the new zones for further disposal. These instructions should be implemented with immediate effect.

Receipt of the letter may please be acknowledged.

**Sd/-
PARMOD KUMAR
Exec. Director, Civil Engineer (G)
Railway Board.**



ANNEXURE-7

Letter No.96/CE.I/CT/29 (Vol.I) dated 5-1-2005 from EDCE(G), Railway Board.

Sub: General Conditions of Contract – Amendments to Arbitration Clause No.63 and 64 of G.C.C.

Ministry of Railways (Railway Board) have decided that Clause 63 and 64 of the General Conditions of Contract may be modified as shown in the enclosed Correction Slip No.4.

This issues with the concurrence of Finance Directorate of the Ministry of Railways.

Receipt of this letter may please be acknowledged.

**Sd/-
PARMOD KUMAR
Exec. Director, Civil Engineer (G)
Railway Board.**

ADVANCE CORRECTION SLIP NO.4

TO

GENERAL CONDITION OF CONTRACT

- (i) Add 'Indian Railway Arbitration Rules' in the end of the title 'Settlement of Disputes' of Clause 63 & 64 and **after addition, the complete title shall be as under:-**

"Settlement of Disputes – Indian Railway Arbitration Rules".

- (ii) Add new clause 64(1) (ii) (d) as under:-

"Place of arbitration:- The place of arbitration would be within the geographical limits of the Division of the Railway where the cause of



action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties.”

- (iii) In para 64 (3) (a) (ii) replace the word ‘upto’ with ‘atleast’ and **after modification the whole sentence would read as below.** There is no other change in this clause.

“ ----- Contractor will be asked to suggest to General Manager **at least** 2 names out of the panel for appointment as contractor’s nominee within 30 days from the date of dispatch of the request by Railway. -----“

- (iv) 64 (3) (a) (iv):- Add at the end of the clause “The Arbitral Tribunal should record the day to day proceedings. The proceedings shall normally be conducted on the basis of documents and written statements. **After modification the complete clause shall read as follows:-**

“The Arbitral Tribunal shall have power to call for such evidence by way of affidavits or otherwise, as the Arbitral Tribunal shall think proper, and it shall be the duty of the parties hereto to do or cause to be done all such things as may be necessary to enable the Arbitral Tribunal to make the award without any delay. **The Arbitral Tribunal should record day-to-day proceedings. The proceedings shall normally be conducted on the basis of documents and written statements.**”

- (v) 64(3) (b)(i):- Add “The analysis and reasons shall be detailed enough so that the award could be inferred there from.” At the end of the clause and **after addition the complete clause would read as under:-**

“The arbitral award shall state item wise, the sum and reasons upto which it is based. **The analysis and reasons shall be detailed enough so that the award could be inferred there from.**”

- (vi) 64(3)(b)(ii):- Replace numeral 30 with 60. **After modification, the complete clause would read as follows:-**

“A party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award of tribunal within **60** days of the receipt of the award.”

- (vii) 64(3)(b)(iii):- Replace numeral 30 with 60. **After modification, the complete clause would read as follows:-**

“A party may apply to tribunal within **60** days of the receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.”



- (viii) 64.6:- Replace word 'Railway Administration' with 'Railway Board' mentioned in 2nd line of clause and add at the end of the clause 'and the fee shall be borne equally by both the parties. Further, the fee payable to the arbitrator(s) would be governed by the instructions issued on the subject by Railway Board from time to time irrespective of the fact whether the arbitrator(s) is/are appointed by the Railway Administration or by the court of law unless specifically directed by Hon'ble Court otherwise on the matter and **after modification and addition the complete clause would be read as under:-**

"The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia include fee of the arbitrator(s) as per the rates fixed by the **Railway Board from time to time and the fee shall be borne equally by both the parties. Further, the fee payable to the arbitrator(s) would be governed by the instructions issued on the subject by Railway Board from time to time irrespective of the fact whether the arbitrator(s) is/are appointed by the Railway Administration or by the court of law unless specifically directed by Hon'ble court otherwise on the matter.**"

Note: Additions/Alterations have been shown in bold letters in the modified clause(s).



ANNEXURE-8

Letter No.2003/CE-I/CT/4 dated 9-10-2003 from EDCE(G), Railway Board.

CORRECTION SLIP NO.3 TO G.C.C.

Sub: General Conditions of Contract – Amendments to Arbitration Clause No.63 and 64 of GCC.

Ministry of Railways (Railway Board) have decided that Clause 63 and 64 of the General Conditions of Contract may be added/deleted/modified as shown in the enclosed Correction Slip No.3.

This issues with the concurrence of Finance Directorate of Ministry of Railways.

Receipt of this letter may please be acknowledged.

DA/As above.

Sd/-
PARMOD KUMAR
Exec. Director, Civil Engineer (G)
Railway Board.

Advance Correction Slip No.3 to General Conditions of Contract.

Note: (i) Deletion from existing clause are shown in *Italic*
(ii) Additions to existing clause are **underlined.**

Existing Clause	Revised Clause
63 – Matters finally determined by the Railway – All disputes and differences of any kind whatsoever arising out of or in connection with the contract,	63 – Matters finally determined by the Railway – All disputes and differences of any kind whatsoever arising out of or in connection with the contract,



<p>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 <i>Railway</i> and the <i>Railway</i> 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' 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 <i>and not be referred to arbitration.</i></p> <p>Note: Existing Clause be read with Correction Slip No.2 issued vide Board's letter No.96/CE-I/CT/29 dated 22-2-2001.</p>	<p>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.</p>
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Existing Clause	Revised Clause
<p>64(1) (ii) – The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim itemwise. Only such dispute(s) or difference(s) in respect of which the demand has been made, together with counter claims or set off, shall be referred to arbitration and other matters shall not be included in the reference.</p>	<p>64(1) (ii) – The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim itemwise. Only such dispute(s) or difference(s) in respect of which the demand has been made, together with counter claims or set off, given by the Railway, shall be referred to arbitration and other matters shall not be included in the reference.</p>

Existing Clause	Revised Clause
<p>64(3)(a)(i) – In cases where the total value of all</p>	<p>64(3)(a)(i) – In cases where the total value of all</p>



<p>claims in question added together does not exceed Rs.10,00,000/- (Rupees ten lakhs only), the Arbitral tribunal consist of a sole arbitrator who shall be either the General Manager or a gazetted officer of Railway not below the grade of JA grade, nominated by the General Manager in that behalf. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by Railway.</p>	<p>claims in question added together does not exceed Rs.10,00,000/- (Rupees ten lakhs only), the Arbitral tribunal shall consist of a sole arbitrator who shall be a gazetted officer of Railway not below JA grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by G.M.</p>
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Existing Clause	Revised Clause
<p>64(3)(a)(ii) – In cases not covered by clause 64(3) (a) (i), the Arbitral Tribunal shall consist of a panel of three Gazetted Rly. Officers not below JA grade, as the arbitrators. For this purpose, the Railway will send a panel of more than 3 names of Gazetted Rly. Officers of one or more departments of the Rly., to the contractor who will be asked to suggest to General Manager upto 2 names out of the panel for appointment as contractor’s nominee. The General Manager shall appoint at least one out of them as the contractor’s nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the ‘presiding arbitrator’ from amongst the 3 arbitrators so appointed. While nominating the arbitrators it will be necessary to ensure that one of them is from the Accounts Department. An officer of Selection Grade of the Accounts Department shall be considered of equal status to the officers in SA Grade of other departments of the Railway for the purpose of appointment of arbitrators.</p>	<p>64(3)(a)(ii) – In cases not covered by clause 64(3) (a) (i), the Arbitral Tribunal shall consist of a panel of three Gazetted Rly. Officers not below JA grade or 2 Railway Gazetted Officers not below JA Grade and a retired Railway Officer, retired not below the rank of SAG Officer, as the arbitrators. For this purpose, the Railway will send a panel of more than 3 names of Gazetted Rly. Officers of one or more departments of the Rly. Which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the contractor within 60 days from the day when a written and valid demand for arbitration is received by the GM. Contractor will be asked to suggest to General Manager upto 2 names out of the panel for appointment as contractor’s nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the contractor’s nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the ‘presiding</p>



	<p>arbitrator' from amongst the 3 arbitrators so appointed. <u>GM shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of contractor's nominees.</u> While nominating the arbitrators it will be necessary to ensure that one of them is from the Accounts Department. An officer of Selection Grade of the Accounts Department shall be considered of equal status to the officers in SA Grade of other departments of the Railway for the purpose of appointment of arbitrators.</p>
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**Note: (3) Other sub-clauses of Clause 64 remain unaltered.
(Authority : Railway Board's letter No.2003/CE-I/CT/4 dated 9-10-2003).**



ANNEXURE-9

Letter No.96/CE.I/CT/29 dated 22-02-2002 from EDCE(G), Railway Board.

Sub: General Conditions of Contract – Clause 63 – Matters finally determined by the Railway.

The Ministry of Railways (Railway Board) have decided that Clause 63 of the General Conditions of Contract may be amended as shown in the enclosed Correction Slip No.2 (Two).

This issues with the concurrence of Legal Directorate of Ministry of Railways.

Receipt of this letter may please be acknowledged.

DA: As above.

**Sd/-
PARMOD KUMAR
Exec. Director, Civil Engineer (G)
Railway Board.**

Letter No.96/CE.I/CT/29 dated 22-2-2001 from EDCE(G), Railway Board

Sub: General Conditions of Contract – Clause 63.

Ministry of Railways (Railway Board) have decided that in clause 63 Clause 8(a) and 62 (1) (b) mentioned as excepted matter may be corrected as under:

	Existing	Modified Clause
10 th line	8 (a)	8
11 th line	62(1) (b)	62(1) to (xiii) (B)

**Sd/-
PARMOD KUMAR
Exec. Director, Civil Engineer (G)
Railway Board.**



ANNEXURE-10

Letter No.95/CEI/CT/24 dated 13-7-2004 from EDCE(G), Railway Board to all Managing Directors of all PSUs.

Sub:- Appointment of the Arbitrator from zonal Railways directly by PSUs.

It has come to the notice of the Board that PSUs are appointing the railway officers as arbitrators for the cases pertaining to PSUs directly without taking formal approval of the concerned railway administrations on which the officer is working. It has been viewed adversely by the Board.

Board (ME, MS & FC) have decided that henceforth PSUs should not appoint any officer as an arbitrator in cases pertaining to their PSUs. If there is a need to appoint any officer from Zonal Railway as an arbitrator in any case pertaining to PSUs, the PSUs may write to the concerned GM to offer suitable officer(s) for the case.

This issues with the Finance Directorate of the Ministry of Railways.

**Sd/-
PARMOD KUMAR
Exec. Director, Civil Engineer (G)
Railway Board.**



ANNEXURE-11

Letter No.2003/CEI/CT/9 dated 17-8-2006 from EDCE(G), Railway Board to All GMs, Pr.CEs and CAO/Cs of Indian Railways.

Sub: Hon'ble High Court / Guwahati's Judgement & order dated 19-6-02 in Arbitration appeal filed by Union of India represented through N.F.Railway/Con/MLG-Vs-Major V.P. Najhawan (Retd.), Contractor on the subject of payment of interest.

In continuation of Board's letter dated 11-7-2003 regarding the judgement of Hon'ble High Court of Guwahati on the subject of payment of interest to the contractor which was in favour of Railways, (Copy was already forwarded to all Indian Railways), the contractor's SLP case has since been dismissed by the Hon'ble Supreme Court and a copy of the same is attached for your information and necessary action.

**Sd/-
T.GUPTA
Exec. Director, Civil Engineering (G)
Railway Board**

Letter No.2003/CEI/CT/9 dated 11-7-2003 from EDCE(G), Railway Board to All GMs, Pr.CEs and CAO/Cs of Indian Railways.

Sub: Hon'ble High Court / Guwahati's Judgement & other dated 19-6-02 in Arbitration appeal filed by Union of India represented through N.F.Railway/Con/MLG-Vs-Major V.P. Najhawan (Retd.), Contractor on the subject of payment of interest.

A copy of the above judgement is enclosed herewith for your information and ready reference. In the Judgement, the Hon'ble Judges on the subject of payment of interest payable to the contractor given the judgement in favour of Railways. Hon'ble Court upheld the contention of the Railways about the interest that the arbitrators do not have jurisdiction to grant interest. A fresh adjudication of the question of interest is illegal and contrary to the provision.

Although, the contractor has gone for SLP in Supreme Court against this judgement and outcome would be circulated as and when available, nevertheless the judgement can prove to be quite useful in contesting several other similar cases.



Encl: Copy of the Judgement.

Sd/-
PARMOD KUMAR
Exec. Director, Civil Engineer (G)
Railway Board.

**IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)**

ARBITRATION APPEAL NO.4/2001

APPELLANT

Union of India

By Advocate : Mr. J.Singh, Sr. Advocate
Mr. I.A Talukdar

RESPONDENT

Major VP Najhawan (Retd.)

**BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MR JUSTICE J.N.SARMA**

Date of hearing/Judgement : 19th day of June, 2002
And Order

JUDGEMENT AND ORDER (ORAL)

(Hon'ble the C.J.)

Heard Mr.J. Singh, learned senior counsel for the appellant and Ms G.Deka, learned counsel for the respondent

2. This arbitration appeal is filed by Union of India (Railways) challenging the order passed by the Civil Judge, Senior Division No.1, Guwahati dated 16-3-2001 passed in Misc (J) Case No.154/2000 arising out of T.S (Arb) Case No.229/95 whereunder he has remitted the matter for fresh adjudication by the sole Arbitrator in respect of interest on items Nos.II, III, IV and V holding that the decision of the Arbitrator in not awarding interest on the said items is not in accordance with law. It is submitted by the learned counsel for the Union of India



that on account of Sub Clause (3) of Clause -16 of the General Conditions of Contract the contractor is not entitled for award of the interest and thus the court has committed an error in setting aside the award so far it related to non grant of interest to the contractor. Clause 16 Sub Clause (3) reads as under:-

“(3) No interest will be payable upon the earnest money or the security deposit or amounts payable to the contractor under the contract, but Government Securities deposited in terms of sub-clause (1) of this clause will be repayable with interest accrued thereto.”

3. It is obvious from Sub Clause (3) that no interest will be payable upon the earnest money, security deposit or the amount payable to the contractor under the contract. Thus, Sub Clause (3) prohibits the contractor from making any claim in regard to interest on the amount of earnest money, security deposit or any amount due to the contractor under the contract. There appears to be complete prohibition of grant of interest by virtue of Sub Clause (3) of Clause 16 of the General Conditions of Contract. In a majority decision rendered by the Constitution Bench of the Apex Court, reported in (2001) 2SCC 721 (Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa & Ors Vs. NC Budharaj (deceased) by LRS & Ors) in para 26 it has been held that the Arbitrator has jurisdiction to award interest, on the sums found due and payable, for the pre-reference period in the absence of any specific stipulation or prohibition in the contract to claim or grant any such interest. Thus the Arbitrator has the jurisdiction to grant interest on the sums found due and payable for the pre-reference period, but it will be subject to the absence of any specific stipulation or prohibition in the contract to grant any such interest. If there is any such specific terms in the contract, prohibiting award of interest, the Arbitrator does not have any authority to grant interest.

4. Sub Clause (3) of Clause 16 of the General Conditions of Contract prescribes such prohibition and, therefore, the Arbitrator does not get any jurisdiction to grant interest to the contractor. When there is a prohibition in the contract for grant of interest, in view of the Apex Court judgement, the Arbitrator does not have jurisdiction to grant interest and no fruitful purpose will be served by remanding the matter to the Arbitrator on the question of interest. The Arbitrator's jurisdiction to grant interest, in view of the terms of the contract, is not available. That being the case, the directions issued by the court below remanding the matter for fresh adjudication on the question of interest is illegal and contrary to the provisions. Consequently, this appeal is allowed, the order dated 16-3-2001 passed in Misc (J) Case No.154/2000 arising out of T.S(Arb) Case No.229/95 by the learned Civil Judge Senior Division No.1, guwahati is set aside to that extent. However, in the facts and circumstances of the case, there will be no order as to costs.



ANNEXURE-12

Letter No.2000/CE-I/CT/39 dated 7-6-2002 from EDCE(G), Railway Board to all GMs, Pr.CEs and CAO/Cs of Indian Railways.

Sub: Hon'ble Supreme Court's orders dated 01-3-2002 in SLP filed by Union of India V/s Sarvesh Chopra, Contractor.

A copy of the above judgement is enclosed herewith for your information and ready reference. In the judgement, the Hon'ble Judges have deliberated upon at length the issues of excepted matters and its arbitrability. Hon'ble Court, in fact, has upheld the contention of the Railway about the excepted matters that these matters should not be allowed to be arbitrated upon. The important observations made by the learned Judges are given below:-

- (i) To be an excepted matter, it is not necessary that a departmental or inhouse remedy for settlement of claim must be provided by the contract. Merely for the absence of provision for inhouse settlement of the claim, the claim does not cease to be an excepted matter.
- (ii) It would be an exercise in futility to refer for adjudication by the arbitrator a claim, though not arbitrable, and thereafter, set aside the award if the



Arbitrator chooses to allow such claim. The High Court was, in our opinion, not right in directing the said 4 claims to be referred to arbitration.

- (iii) We cannot subscribe to the view that interpretation of arbitration clause itself can be or should be left to be determined by arbitrator and such determination cannot be done by Court at any stage.”

In a nutshell, it can be said that the above judgement may prove to be a landmark judgement in contesting other similar cases where excepted matters have been arbitrated and a award given by the arbitrator.

Sd/-
PARMOD KUMAR
Exec. Director, Civil Engineer (G)
Railway Board.

N.B.: The copy of the judgement of the High Court & Supreme Court mentioned in the letters above have not been annexed here due to paucity of space.

ANNEXURE-12A

D.O.Letter No.2008/CE.I/CT/7(SLP) dated 09.04-2008 from Shri K.C.Jena, Chairman, Railway Board to Shri Sri Prakash, GM/Northern Railway.

Sub: Judgement of Hon'ble High Court, Kolkata & Hon'ble Supreme Court of India in SLP (CA No.6324 of 2004) UOI - vs - Krishna Kumar on the point of qualification of the Arbitrator and power of the General Manager to appoint its own officer as Arbitrator.

Recently in a case of SE Railway titled as UOI - vs - Krishna Kumar bearing SLP No.6324, the Hon'ble Supreme Court of India has upheld the agreemental condition of the GCC that in a dispute between the contractor and the Railway Administration only a Gazetted Railway Officer can be appointed as an arbitrator.

In a nutshell, the above judgement may prove to be a landmark judgement in contesting other similar cases in various courts.

A copy of the judgement is enclosed herewith.

I would like you to monitor the court cases for appointment of outside arbitrators in the Railway arbitration cases so that the same are brought down to Nil in view of the above judgement.

Encl. As above.

Sd/-
(K.C.Jena)



**Chairman,
Railway Board.**

ANNEXURE-13

Letter No.2002/CE-I/CT/2 dated 03-01-2002 from EDCE(G), Railway Board to GMs & PUs.

Sub: Monitoring of arbitration cases.

It is seen that due to lack of proper monitoring system in place, arbitration cases are getting badly delayed. Not only this, in absence of proper monitoring at proper level, unduly high awards awarded by the Arbitrators go unchallenged.

The then GM/South Eastern Railway (now CRB) issued some instructions in this regard on S.E. Railway which, once implemented, would mitigate these problems to a large extent. A copy of the same is enclosed for your ready reference and taking further necessary action in this regard.

Encl: As above.

**Sd/-
PARMOD KUMAR
Exec. Director, Civil Engineer (G)
Railway Board.**

Note No.GM/SDGM dated 17-2-2000 from GM/SE Rly. To All PHODs & DRMs of SE Rly.

Sub: Legal / Court cases.

I had given specific instructions for monitoring of legal cases vide my note No.G7/SDGM dated 7-11-97 (copy enclosed). I find that the same have not been implemented by some of the divisions / departments in HQ and I continue to receive cases which are being delayed/are badly dealt with in absence of proper monitoring. The contempt cases from courts continue to be received.

All the DRMs and PHODs should confirm by a note to me by 28-2-2000 that the monitoring system has been separately set up for each of the 3 types of cases below:-

(i) Cases pending in Courts: - A case will be entered in the register, as soon as a copy of the plaint submitted by the Plaintiff in the Court is received. The same will be done for cases initiated by the Railway. This monitoring would be to ensure that Advocates are nominated and deputed, the officers/inspectors /OSs who are required to follow up that case are identified and nominated, our



replies/papers are filed in the court in time, all hearings are attended by the concerned officer as well as the advocate etc.

(ii) The second register/computer statement should be of all decisions given by the Courts, on which action is required to be taken by the Railway administration to avoid contempt of court. The time frame specified by the court and the target date for action should be boldly indicated against each case. Normally action could be initiated on the day the judgement is delivered by the court, as the nominated officer/advocate attending the court on that date would give a note indicating the decision of the court.

(iii) A separate record should be kept of all the contempt applications that are filed in the courts against the Railway officers. In case of contempt petition filed against GM, I should be advised well in advance and the case discussed in detail by SDGM and the PHOD with the undersigned along with Advocate, if necessary.

The three registers should be scrutinized at various levels at frequency decided by DRM/PHOD. The registers in (ii) and (iii) above should be scrutinized by the PHOD/DRM/SDGM personally.

Encl: One

GM/S.E.Rly.

Note No.G7/SDGM dated 7-11-97 from GM/SE Rly. To PHODs of S.E.Rly.

Sub: Legal Cases.

1. SDGM and other concerned PHODs, mainly CPO, CCM, CE, should keep a record in the form of a register or computerized statement of all the decisions given by the Courts on which action is required to be taken by the Railway Administration to avoid Contempt of Court petitions. This register should be scrutinized by SDGM and the PHODs once in a fortnight to see the progress of such items in which action is required to be taken.

2. A separate record should be kept by SDGM and the PHOD concerned of all the contempt applications that are filed in various Courts against the Railway officers. In case of contempt petitions filed against the General Manager, I should be advised well in advance, and the case discussed in detail by SDGM and the PHOD with the undersigned along with the Advocate, if necessary well in advance.

GM/S.E.Rly.

Note No.GM/SDGM dated 12-5-99 from GM/SE Rly. to All PHODs & DRMs of SE Rly.



Sub: Arbitrations.

1. The rising trend of heavy awards, specially by arbitrators appointed by High Courts, was discussed in a meeting with CE, SDGM, FA&CAO(HQ), CE(C)/GRC, CE(G) and Law Officer. Some of the decisions taken have been given in paras indicated below.
2. As regards acceptance of an award, as per Schedule of Powers, it was clarified that --
 - (i) The amount of award for the purpose of powers of sanction, is the amount found payable by the arbitrator plus the amount of interest awarded by the arbitrator up to the date of the award.
 - (ii) The levels at which the vetting of an award will be done by Finance and Law Office should also be laid down. While awards in excess of Rs.25 lakhs should be seen by FA&CAO and those in excess of Rs.50 lakhs by co-ordinating FA&CAO, from Law side all awards in excess of Rs.25 lakhs should be seen by SDGM.
 - (iii) In case of awards in excess of Rs.25 lakhs by arbitrators other than Railway officers and in other awards where deemed necessary, we should consult a good Advocate dealing with arbitrations and arbitration awards to see whether the award can be challenged in the court.
3. The section of DGM(G) is still not giving adequate attention to computerization of data and keeping track of various arbitration cases. Instructions given for keeping of the cases in computer have still not been compiled with. The following action is required -
 - (i) Keeping a record of all applications received for arbitration in the following proforma -
 - (a) Agreement number.
 - (b) Name of the contractor
 - (c) Executive Officer to whom it pertains.
 - (d) Agreement value
 - (e) Date of application of claims asking for arbitration
 - (f) Amount of claims
 - (g) Reference of court case, if any
 - (h) Date of appointment of arbitrators.
 - (i) Name of arbitrators
 - (ii) After appointment of the arbitrators, the record must be kept in the following proforma of all cases where the arbitrators have been appointed either by GM or by the Court -



- (a) Agreement number
 - (b) Executive officer incharge
 - (c) Name of the contractor
 - (d) Value of agreement
 - (e) Payment made against the agreement (rounded off in lakhs of rupees)
 - (f) Amount of claims
 - (i) Other than interest
 - (ii) Interest.
 - (g) Name of the arbitrators
 - (h) Date of appointment of arbitrators.
 - (i) Whether the appointment of arbitrator is as per old Arbitration Act of 1940 or new Arbitration Act of 1996?
 - (j) Date on which entered into reference.
 - (k) Initial period given to arbitrators by GM /Court.
 - (l) Number of sittings held
 - (m) Amount of arbitration fee paid
 - (n) Amount of award -
 - (i) Award against claims other than interest.
 - (ii) Interest upto the date of award
 - (iii) Interest from the date of award.
4. DGMG should also make out a statement of all awards that were pronounced by the arbitrators and were received between 1.4.97 and 31.3.99 in the following proforma -
- (a) Agreement number
 - (b) Name of arbitrator
 - (c) Date of appointment of arbitrator
 - (d) Number of hearings
 - (e) Amount of contractor's claim
 - (f) Value of agreement
 - (g) Amount paid against the work (rounded off in lakhs of rupees)
 - (h) Amount of claims – (i) Other than interest.
 - (ii) Interest
 - (i) Amount of award - (i) other than interest
 - (II) Interest up to the date of award.
 - (j) Arbitration fee paid
5. Special action to be taken to prevent appointment of arbitrators other than as per arbitration agreement, i.e. other than Railway officers --
- 5.1 We must make out a letter and a list of arbitrators as per the arbitration agreement incorporated by the Railway and should be given to the Joint



Secretary, Ministry of Law/Addl. Solicitor General concerned for being presented to the Court, where the court finds that the appointment of an outside arbitrator is inevitable.

- 5.2 We must contest the appointment of outside arbitrator till the end and where necessary till the highest court, with the approval of the competent authority. For this purpose, the concerned Executive officer must report by FAX to his PHOD and to SDGM the facts of Court's order appointing outside arbitrator within 3 days of the hearing in the High Court in which appointment of such an arbitrator has been decided.
- 5.3 We must also advise the Law Ministry officials in Calcutta in writing of the fact that appointment of arbitrators other than Railway Officers is not in accordance with arbitration agreement being entered into by Railways with the contractors and with appointment of arbitrators not in accordance with this agreement is not acceptable to Railways and must be contested in all circumstances.
6. Specific precautions to be taken and actions to be taken when outside arbitrators are appointed -
 - 6.1 A letter has to be given to the arbitrator, indicating our non-acceptance in principle of appointment of arbitrators against the arbitration agreement. This letter is to be given as per clause 11 (8) (a), 12(3) and 13(2) of the new Arbitration Act. CE(G) has prepared some format for this letter, which should be seen by Law Officer and SDGM and with modifications should be discussed with the undersigned and issued in the next fortnight to all concerned.
 - 6.2 Where fixed time limit has been given for completion of the arbitration by GM or by the Court, extension to the time period should be accordingly only with the approval of the Head of the Department, i.e. CE(G) or CE(C). Unlimited extensions in such cases should not be granted.
 - 6.3 Any discrepancies that are observed in the minutes of the arbitration sittings should be given to the arbitrator in writing. These discrepancies can be -
 - (i) One sided recording of minutes by the arbitrators without recording the Railway's viewpoint.
 - (ii) Records or other important documents produced or given by the Railway to the arbitrator during the sittings not being mentioned in the minutes.



- (iii) Documents produced by the claimant, which are not on our record, are supposed to have been signed by retired employee or an officer and are taken note of by arbitrator. In all such cases, even fraudulently obtained or fraudulently signed or a fraudulently prepared record is produced by the claimants before the arbitrator. Railway should not only protest in writing but should ask for a copy in writing for investigations by the relevant agencies.

7. SCRUTINY OF AWARDS

7.1 The Executive, Accounts as well as Law Office must scrutinize all the awards in detail before they are cleared for payment. The awards should however, be examined quickly as the time period of only 3 months is available within which an award can be challenged. The following points are very pertinent -

- (i) Whether the award is governed by the old Arbitration Act or the new Arbitration Act and what are the grounds in the two acts as per which the award can be challenged.
 - (ii) Whether the award is in accordance with the terms of reference.
 - (iii) Whether all items of terms of reference have been covered by the award.
 - (iv) Whether a speaking award has been given for all the items of award.
 - (v) Whether the procedure followed has been without bias and we have never protested regarding bias of the arbitrator.
 - (vi) Whether the arbitrators have misconducted themselves or have misconducted the proceedings.
 - (vii) Whether the award contains the interest and whether all 3 elements of interest, i.e. pre-arbitration interest, pendant lite interest and post-arbitration interest, are covered by the arbitration agreement as well as the relevant law laying down the limit and admissibility of each type of interest.
- 7.2 Delays by any of the 3 scrutinizing agencies, i.e. Executive, Finance and Law, resulting in delay in filing appeal as required to nullify the award, will be taken very seriously against the concerned officers.

SDGM must identify, in consultation with Railway Board and the Ministry of Law, who will contest on our behalf such major awards, specially by the



outside arbitrators, which are found to be not only unreasonable but not in accordance with the law.

8. MISCELLANEOUS:

- 8.1 Railway Board has given a clarification regarding applicability of new/old Act. This is inadequate and another reference should be made to Board as discussed during the meeting. The letter may be shown to GM before issue.
- 8.2 In the appointment letters of the arbitrators, we must mention the office (DRM/CE(C) who will represent the Railway administration. The arbitrator should also be asked by the same letter to endorse copies of all correspondence to GM, PHOD (giving designation and address) and the Executive Officer (giving designation and address) concerned.
- 8.3 JAG officers /ADRM in the Division, SAG Officers in the Construction Organisation and nominated SAG Officers in HQ of Engineering, Electrical and S&T Departments must keep watch on all applications received for arbitration, through a register or a computerized statement and the progress made thereof.

The comments on claims sent to GM's Office are often frivolous and signed by AEN/XEN. These must have the approval of at least JA Grade officer in the Division and CE (C) in the Construction Organisation.

GM/S.E.Rly.



ANNEXURE-14

Letter No.63-W/0/Pt.VIII/Policy-WA dated 11-5-2006 from CE/G, N.Rly to all Sr.DEN/Cs, N.Rly. and EDUs and Copy to all concerned.

Sub: Fee of the Arbitrator appointed by the Court and appointment of the Arbitrator by the Court.

In terms of Correction Slip No.4 to General Conditions of Contract issued by Board (copy enclosed)(Annex-7), the fee of the arbitrator even if appointed by the Hon'ble Court would be governed by instructions issued on the subject by Railway Board from time to time unless otherwise directed by the Hon'ble court. This matter should be brought to the notice of the learned arbitrator in case he fixes his fee higher than what is payable as per Railway Board's directives in force, during the first hearing itself.

Further, it is also noted that at number of occasions the arbitrators are appointed by the court lower than the High Court. It is not in order in view of the judgement of Supreme Court in a case of M/s SBP and Co. Vs. M/s. Patel Engg. Ltd. and ANR against appeal No.4168 of 2003. Supreme Court have already stated that the power under section 11 (6) of the Arbitration Act, in its entirety could be delegated by the Chief Justice only to another judge of that court and by the Chief Justice of India to another judge of Supreme Court. Therefore, these powers cannot be exercised by any other judge of lower court than a High Court.

Therefore, in such cases where appointment of the arbitrator has been done by a judge of lower court than the High Court. Divisions should take appropriate action in consultation of Law Officer of the Division/HQ in seeking to set aside such judicial orders.

DA/Main excerpts of the Judgement
& C.S. No.4 to G.C.C.

CE/G, N.Rly.



ANNEXURE-15

Copy to Railway Board's letter No.E(G)2004 HQ1-2 dated 21-5-04 from Jt. Director Estt. (G) addressed to the General Managers, All Indian Railways and Production Units & copies others.

Sub: Payment of honorarium to the stenographers engaged by the Arbitrators for the work relating to Arbitration / Arbitration award.

Ministry of Railways have considered the question of payment of honorarium to the Stenographers engaged by the Arbitrators for the secretarial work in connection with Arbitration/Arbitration award. It has been decided that the Stenographers engaged for the Arbitration work/Arbitration award would be entitled to an honorarium of Rs.500/- per case. Only one steno would be permitted in each case. In cases where services of more than one stenographers are utilized, the amount of honorarium payable would still be Rs.500/- which can be divided by the Arbitrator among the various Stenographers who work for the case. In the event the Board of Arbitration consists of more than one member, selection of stenographer shall be left to the Presiding Officer. In the first instance, efforts should be made to nominate a serving railway employee to work as Stenographer. If no serving Railway employee is available to work as stenographer, only then a retired Railway officer appointed as Arbitrator may be asked to bring his own stenographer.

This issues with the concurrence of Finance Directorate of the Ministry of Railways.

**Jt. Director Estt. (G)
Railway Board.**



ANNEXURE-16

Letter No.63-W/0/Pt.VIII (Policy)WA dated 9-3-04 from Dy.CE/Works to All DSE/C, N.Rly, All Officers of Engineering Branch/HQs Office and EDUs

Sub: Remuneration of Railway Officers acting as Arbitrators.

Enclosed please find herewith a copy of letter No.E(G)2004/HO1-2 dated 24-2-2004 along with Hindi version from Shri M.D.Pillai, Jt. Director Estt. (G), Railway Board, New Delhi on the above noted subject for information and necessary action.

DA/As above.

**Dy.CE/Works,
For General Manager/Engg.**

Letter No.E(G)2004/HO1-2 dated 24-2-2004 from Shri M.D.Pillai, Jt. Director Estt. (G), Railway Board, New Delhi to GMs of Indian Railways.

Sub: Remuneration of Railway Officers acting as Arbitrators.

Ministry of Railways have reviewed the rate of honorarium payable to Railway servants appointed to act as Arbitrators in disputes between the Govt. of India and private parties as laid down in letter No.E(G)90 HQ1-18 dated 17-10-91. The matter was discussed in full Board Meeting held on 27-11-2003 wherein a decision has been taken to enhance the honorarium payable to Railway servants acting as Arbitrators in supercession of Board's letter dated 17-10-91. It has been decided that honorarium shall be paid to Railway servants appointed to act as an Arbitrator to settle the disputes @ Rs.300/- per day or Rs.150/- per half day subject to a maximum of Rs.10,000/- per case. For this purpose a day means more than two hours continuous work on any date and half day means work for 2 hours or less. The officer working as Arbitrator shall record a certificate in writing indicating whether he has worked for a half day or for full day on a particular day. The above honorarium to a serving Railway officer acting as an Arbitrator shall be payable irrespective of the Deptt. to which the case pertains. However, while nominating Arbitrator, it should be ensured that the officer should not have dealt with that particular case previously.



This has the sanction of the President and issues with the concurrence of Finance Directorate of the Ministry of Railways.

**Jt. Director Estt. (G),
Railway Board, New Delhi**

ANNEXURE-17

Letter No.362E/0/2/Eiv dated 27-11-1967 from GM/P, Northern Railway to All Divisional & Extra Divisional Offices of N.Rly.

Sub: Remuneration to Railway Officers acting as Arbitrators.

A copy of Railway Board's letter No.E(G)65Ho1-23 dated 4-11-67 is forwarded for information and guidance. Board's letter dated 16-1-61 and 13-11-1963 referred to therein were circulated vide this office letter of even No. dated 4-3-61 and 17-12-63 (Serial Nos. 1069 & 2351) respectively.

DA/As above.

**sd/-
H.P.Gupta
For General Manager (P), N.Rly.**

Copy of above:

Sub: As above.

1. Reference Board's letter No.E(G)60H01-25 dated 16-1-61. On further consideration the Railway Board have decided that a Railway Officer appointed as an arbitrator in a dispute in which the Railway Administration is a party, should be of a department different from the one to which the dispute pertains.
2. In supersession of the clarification made in para – 2 of their letter No.E(G)62HO1-26 dated 13-11-63, the Board have also decided that the appointment of an Engineer from the 'Open Line' of the Civil Engineering Department as an Arbitrator to deal with a case of 'Construction' and vice-versa would be treated as an appointment of an arbitrator from a different department and the officer may be allowed to claim honorarium within the meaning of the provisions contained in para.1 (ii) of Board's letter No.E(G)60H01-25 dated 16-1-1961.



Railway Board

ANNEXURE-18

STAMP DUTY for publication of Award:

Page No.934 of Sch. I-A – Stamp duty on certain instruments, etc.

(1)	(2)
Exemption	
Articles of any association not formed for profit and registered under section 25 of the Companies Act, 1956. See also Memorandum of Association of a Company (No.39).	
Art.11. Articles of Clerkship.	As in Schedule I
(Or contract whereby any person first becomes bound to serve as a clerk in order to his admission and an attorney in any High Court.)	Delhi. – Four hundred rupees. Haryana. – Two hundred and fifty rupees.
Assignment. See Conveyance (No.23) Transfer (No.62 and Transfer of Lease (No.63), as the case may be. Attorney. See Entry as an Attorney (No.30), and Power-of-Attorney (No.48). Authority to adopt. See Adoption deed (No.3). Art. 12. Award, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit –	



(a) where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs.1,000;	The same duty as a Bond (No.15) for such amount.
(b) if it exceeds Rs.1,000 but does not exceed Rs.5,000;	<p>Punjab.— Twenty rupees (Rs.15 under Acts 17 of 1994, and 34 of 1960; Rs.10 prior thereto).</p> <p>Delhi.— One rupee for every one thousand rupees or part thereof of the value of the property to which the award relates.</p> <p>H.P.— Fifteen rupees.</p> <p>Haryana.— Five rupees.</p>
and for every additional Rs.1,000 or part thereof in excess of Rs.5,000.	<p>Punjab.- Two rupees subject to a maximum of one hundred and thirteen rupees (Rs.1.15 subject to a maximum of Rs.112.50 under Act 34 of 1960; and 75 n.p. subject to a maximum of Rs.75 prior thereto).</p> <p>Delhi.— 75 paise subject to a maximum of Rs.75.</p> <p>Haryana and H.P.- Rs.1.15 subject to a maximum of Rs.112.50.</p>



ANNEXURE-19

GUIDELINES TO ARBITRATORS: Guidelines to Arbitrators issued by Northern Railway:

GUIDELINES

FOR

ARBITRATORS

(FOR WORKS CONTRACTS)

ENGINEERING DEPARTMENT
NORTHERN RAILWAY,
HEADQUARTERS OFFICE,
BARODA HOUSE, NEW DELHI



GUIDELINES FOR ARBITRATORS:

STEPS FOR FINALISATION OF AN ARBITRATION CASE AFTER APPOINTMENT BY GENERAL MANAGER/ HON'BLE COURT.

CASES GOVERNED BY INDIAN ARBITRATION ACT-1996

- (i) On receipt of appointment letter, the Sole-Arbitrator (Presiding Arbitrator in case of more than one arbitrator) should enter into reference by addressing a letter to the Claimant (and copy to Respondent) to submit statement of facts within 15 days and thereafter respondent should submit his counter statement of facts within next 15 days. (Annex-I). The Claimant should also be asked to send a copy of the statement of facts to each arbitrator and the respondent.

For further correspondence Presiding Arbitrator may nominate one of the Co-Arbitrators as convener to Organize & write letters on behalf of Arbitral Tribunal.

- (ii) Any correspondence with one party should invariably be endorsed to the other party as well as Co-Arbitrators / Presiding Arbitrator.
- (iii) On receipt of Statement of Facts/ Counter Statement of Facts from claimant as well as from respondent.
- Hearings should be fixed for giving full opportunity to both the parties to present their case. Format is enclosed as **Annexure-II**. In case of failure of either party to submit SF/CSF the case should be proceeded Ex-parte after giving due notice of Ex-parte (preferably through newspapers).
 - In case one of the party, especially claimant, is not available & has left his address & registered letters are received back, the respondent & the Pr.CE/CAO Office (on behalf of the G.M.) should make all out efforts to locate the contractor. After that ex-parte decision may be taken. For this, respondent should be directed to submit counterstatement of facts & counter claims based on original claims of the claimant. Hearings may be finalized in absence of the contractor.
 - The arbitrators draw their jurisdiction from the "Terms of Reference" through their appointment letter.
 - The award is strictly to be in terms of contract agreement. Arbitrator cannot award any amount ruled out by term of agreement i.e. excepted matters. (List of Excepted Matters clearly showing the clauses of GCC etc. is enclosed herewith) (**Annexure-VIII**)



- (iv) Act does not provide any time limit for publication of award. However, the mandate of an arbitrator shall terminate if he fails to act without undue delay. Therefore arbitrators are to act and finalise the case expeditiously. As per Railway Board's letter placed as Annexure – 3, item 5 normally an arbitration award must be given within 4 months from the date of first hearing. However, for claims exceeding Rs.15 lacs a period upto one year may be permitted.
- (v) Further, all the Arbitrators are supposed to sit in the proceedings of the case.
- (vi) The award is to be by the majority ruling of Arbitral Tribunal Section 29 (1) & 31 (2) of Act. This was an anomaly which has been covered by G.C.C. 1999 Clause 64.4 which states: "In the absence of such a majority, the view of Presiding Arbitrator shall prevail" .
- (vii) Place of hearing if not agreed unanimously, should be fixed by Sole-Arbitrator /Presiding Arbitrator & it should either be within geographical limits of the Division/Dy.CE in case of construction or Railway HQs as per GCC correction slip no. 4.
- (viii) When the case is nearing finalisation, the parties are directed to submit stamp papers for publication of the award.
- The value of which is governed by Stamp Duty Act of the concerned State. In case of Delhi State, Stamp Duty Act Section 12 deals with, the amount is Rs.1 / 1000 of the claims. Claimant and Respondent may be asked to supply stamp papers for their respective claims (subject to a minimum of Rs.25/-) for publishing the award.
 - The Headquarter of the Arbitrator where award is published will govern the applicability of the Stamp Duty Act, i.e. if the Arbitrators are Headquartered at Lucknow, U.P. State Stamp Duty Act will be applicable.
- (ix) On finalization, the hearings are to be concluded by obtaining the No Objection Certificates from both the parties. Format enclosed as **Annexure-IV**.
- (x) Award in general may be published within one year & after conclusions of the hearings:
- Arbitrators are required to publish the award and send notice to both the parties about publication of the award directing for payment of fee / honorarium. Notice for fee / honorarium is to be



signed only after award is signed and on the same date on which award is published and signed.

- Original copy of award on stamp paper will form a part of file of the Convener. Number of copies of award will depend upon the Constitution of Arbitration Tribunal. Format of award enclosed as **Annexure-V**.
 - Award is to be signed by all the members of Arbitral Tribunal. However, any member can give note of descent, if any.
- (xi) After publication of the award notice to both the parties is sent for payment of fee/ honorarium and clerkage of secretarial staff of the Arbitral Tribunal. As per extant instructions, Arbitrator is entitled for fee Rs.300/- per day (per hearing) for more than two hours duration and Rs.150/- for half day (for hearing less than two hours) duration subject to a maximum of Rs.10,000/- per case. Amount for clerkage is Rs.500/- (only one steno/clerk) per case vide Railway Board's letter No. E(G)2004.H01-1 dated 21-05-2004. No amount is prescribed for peon and is the discretion of the Arbitral Tribunal. The notice for payment of fee / honorarium must invariably give number of hearings as well as its duration. It should also contain a certificate regarding typing work being done outside normal working hours for Clerkage. Format enclosed as **Annexure-VI**. (one half of the amount of Fee/ Honorarium/ Clerkage as mentioned above should be charged from each of the parties.)
- (xii) On receipt of fee / honorarium from both the parties, the award should be released (**Annexure-VII**).

The arbitration case file after a period of 60 days after the receipt of award by both the parties may be sent to the office of the respondent for record.



STEPS FOR FINALISATION OF AN ARBITRATION CASE AFTER APPOINTMENT BY GENERAL MANAGER/ HON'BLE COURT.

CASES GOVERNED BY INDIAN ARBITRATION ACT-1940

- (i) On receipt of appointment letter, the Sole-Arbitrator (in case of more than one arbitrator Co-Arbitrators) should enter into reference by addressing a letter to the Claimant (and copy to Respondent) to submit statement of facts within 15 days and thereafter respondent should submit his counter statement of facts within next 15 days. (Annex-I)

It is already mentioned in the appointment letter of the Co-Arbitrators to nominate an Umpire within 30 days of their appointment.

- (ii) Any correspondence with one party should invariably be endorsed to the other party as well as Co-Arbitrators and Umpire.
- (iii) On receipt of Statement of Facts/ Counter Statement of Facts from claimant as well as from respondent.
- Hearings should be fixed for giving opportunity to both the parties to present their case. Format is enclosed as **Annexure-II**. In case of failure of either party to submit SF/CSF the case should be proceeded Ex-parte after giving due notice of Ex-parte.
 - In case one of the party, especially claimant is not available & has left his address & Registered letters are received back, the respondent & the Pr.CE/CAO Office (on behalf of the G.M.) should make all out efforts to locate the contractor. After that ex-parte decision may be taken. For this respondent should be directed to submit counterstatement of facts & counter claims based on original claims of the claimant. Hearings may be finalized in absence of the contractor.
 - The arbitrators draw their jurisdiction from the “Terms of Reference” through their appointment letter.
 - The award is strictly to be in terms of contract agreement. Arbitrator cannot award any amount ruled out by term of agreement i.e. excepted matters. (List of Excepted Matters clearly showing the clauses of GCC-1999 etc. is enclosed herewith) (**Annexure-VIII**)
- (iv) Arbitrators are supposed to publish the award within four months from the date of entering into reference. If it is felt that it is not possible to publish this award within four months from the date of entering into reference then either extension for publication of the award can be taken from claimant / respondent (Format enclosed as Annexure-III) or one of the parties can be requested by the Arbitrator



to approach Hon'ble Court for extension of time for publication of award under Section 28 of the Arbitration Act – 1940.

(v) Umpire is not supposed to sit in the arbitration proceedings and is required to act either in case of difference of opinions between the Co-Arbitrator or on expiry of the time limit of award as per Schedule I Rule 4 of Indian Arbitration Act – 1940.

(vi) In case of difference of opinion between the Co-Arbitrators, the decision of Umpire shall be final.

(vii) For place of hearing there is no mention in GCC-1989 (if not agreed unanimously, should be fixed by Sole-Arbitrator /Co-Arbitrator & it should either be within geographical limits of the Division/Dy.CE in case of construction or Railway HQs as per GCC-1999 correction slip no. 4.)

(viii) When the case is nearing finalisation, the parties are directed to submit stamp papers for publication of the award.

- The value of which is governed by Stamp Duty Act of the concerned State. In case of Delhi State, Stamp Duty Act Section 12 deals with, the amount is Rs.1 / 1000 of the award. For the confidentiality of award, the claimant may be asked to deposit 0.1% of the claims in cash. After the award is ready, the Arbitrator may purchase stamp paper of 0.1% of the award (subject to a minimum of Rs.25/-) for publishing the award & return the balance to the claimant after declaring the award.
- The Headquarter of the Arbitrator where award is published will govern the applicability of the Stamp Duty Act, i.e. if the Arbitrators are Headquartered at Lucknow, U.P. State Stamp Duty Act will be applicable.

(ix) On finalization, the hearings are to be concluded by obtaining the No Objection Certificates from both the parties. Format enclosed as **Annexure-IV**.

(x) After conclusions of the hearings:

- Arbitrators are required to publish the award within the extended time and send notice to both the parties about publication of the award directing for payment of fee / honorarium. Notice for fee /



honorarium is to be signed only after award is signed and on same date on which award is published and signed.

- Original copy of award on stamp paper will form a part of file of the Convener. Number of copies of award will depend upon the Constitution of Arbitration Tribunal. Format of award enclosed as **Annexure-V**.
- Award is to be signed by all the members of arbitral tribunal.

(xi) After publication of the award notice to both the parties is sent for payment of fee / honorarium and clerkage of secretarial staff of the Arbitral Tribunal. As per extant instructions Arbitrator is entitled for fee Rs.300/- per hearing for more than two hours duration and Rs.150/- for less than two hours duration subject to a maximum of Rs.10,000/- per case. Amount for clerkage is Rs.500/- (one steno/clerk only) per case vide Railway Board's letter No. E(G)2004.H01-1 dated 21-05-2004. No amount is prescribed for peon and is the discretion of the Arbitral Tribunal. The notice for payment of fee / honorarium must invariably give number of hearings as well as its duration. It should also contain a certificate regarding typing work being done outside normal working hours for Clerkage. Format enclosed as **Annexure-VI**. (half of amount of Fee/Honorarium/Clerkage as mentioned above should be charged from both the parties.)

- (xii) On receipt of fee / honorarium from both the parties the award should be released (**Annexure-VII**).



NORTHERN RAILWAY

No.

Regd.

Dated :-

1) ----- (Claimant),

2) ----- (Respondent),

Sub:- -----

Ref:- Appointment letter No. ----- dated -----

The hearing in the above noted case has been fixed for ----- & ----- (month) 2006 at ----- hrs., in my chamber/in the chamber of -----. Both the parties are directed to attend the hearing on the date and time fixed with all documentary evidence in support of the case.

(-----)
Sole-Arbitrator/Umpire/Co-Arbitrator/Presiding Arbitrator

1. Copy to General Manager/Engg., Northern ----- for information please.
2. Copy to Co-Arbitrator for -----
3. Copy to Umpire /Presiding Arbitrator -----



Annexure - III

Shri -----
Sole Arbitrator &

Shri -----
Co-Arbitrator &

Shri -----
Presiding Arbitrator &

Sub: -----

We the undersigned agree for extending the time limit for publication of award up to ----- with regularizing the intervening period.

M/s ----- (Claimant)

----- (Respondent)



Annexure - IV

Shri -----
Designation &
Sole Arbitrator

Shri -----
Designation &
Co-Arbitrator

Shri -----
Designation &
Presiding Arbitrator

Sub: -----

We the claimant and the respondents do hereby certify that we have been given full opportunity by the Learned Sole-Arbitrators/Arbitral Tribunal to represent our case before them and produce evidence and documents that we considered necessary. We have been heard fully and have nothing more to add. We now request the Sole Arbitrator/ Arbitral Tribunal to proceed further in the matter for making and publishing the award.

M/s ----- (Claimant)

----- (Respondent)



Annexure – V

AWARD

In the matter of Arbitration

between (claimant) -----

AND

Union of India representing through (respondent) -----,

In connection with work for -----

AND WHEREAS Shri ----- and Sh. ----- were appointed as Co-Arbitrators in the above matter by General Manager, ----- Railway vide letter No. ----- dated -----;

AND WHEREAS the said disputes and difference were referred to us;

AND WHEREAS after nominating Sh. ----- as Umpire/Presiding Arbitrator, We had entered into reference on -----.

AND WHEREAS the said disputes and differences as contained in the Statement of Facts and Counter Statements of Facts received from both the parties as well as additional papers produced and / or cited before us during the hearings.

AND WHEREAS both the parties have given their undertaking in writing that they have been given / afforded full opportunity to represent their case and have nothing more to produce / say in the matter and have further requested to make and publish the Award;

AFTER having heard and fully considered all arguments and evidence of the parties concerning the said disputes and differences and having gone through all the materials,



papers and documents, and having considered all the matter submitted to us in connection with the aforesaid disputes and differences, we do direct and award as follows:-

Details of Contractor's claims:-

S.No.	Description of claims	Amount of claims	Amount of award	Reasons of amount awarded.
1				
2				
3				
4				
5				
TOTAL =				

Railway's Claims:-

IN CONCLUSION U.O.I. represented through ----- (respondent) shall pay to M/s ----- (claimant) a sum of Rs.----- + ----- + ----- plus release of FDR deposited towards earnest money in full and final settlement of all claims/Counter Claims of both the parties arising out of the disputes and counter disputes as referred by the General Manager in his letter No. ----- dated -----;



THAT this amount as mentioned above should be paid to claimant within ----- days from the date of publication of the award failing which amount of award will carry simple interest of -----% till the date of payment;

(In case award is in favour of U.O.I. the language will get change suitably)

That the expenses incurred on non-judicial stamp papers shall be borne by the parties (Stamp papers already supplied on demand from Arbitral tribunal);

That any of the expenses incurred by the parties in connection with the arbitration will be borne by themselves.

This award is given and signed by us at ----- on this ----- day of -----

(-----)
Co-Arbitrator &

(-----)
Co-Arbitrator &

(-----)
Presiding Arbitrator &



NORTHERN RAILWAY

No.

Dated :-

1) ----- (Claimant),

2) ----- (Respondent),
Northern Railway,

Sub:- -----

In terms of Arbitration and Conciliation Act 1996/Arbitration Act 1940 the Arbitral Tribunal gives notice that on ----- (month) ----- have made the Award in the above case and signed it.

The Claimant and the Respondent are requested to pay the fee / Hon. of the Sole-Arbitrator / Umpire/Co-Arbitrators, Presiding Arbitrator as well as clerkage and peon charges as shown below against each:

S.No.	Particular	Payable by N.Rly	Payable by Firm
1	Fee/Hon. of Sh. ----- Co-Arbitrator & ----- Rly. - -----	Rs.-- - -/-	Rs.----- -/-
2	Fee/Hon. of Sh. ----- Co-Arbitrator & ----- Rly. - -----	Rs.-- - -/-	Rs.----- -/-
3	Fee/Hon. of Sh. ----- Presiding Arbitrator & ----- - Rly. -----.	Rs.-- - -/-	Rs.----- -/-
4	Clerkage to be paid to CA/----- -----, Delhi . Typing work was done outside Office hours)	Rs.-- - -/-	Rs.----- -/-



5	Clerkage to be paid to Sh. ----- -----CA/----- Rly. (work was done outside Office hours)	Rs.-- - -/-	Rs.----- -/-
6	Clerkage to be paid to CA/----- ----- Rly. ----- (work was done outside Office hours)	Rs.-- - -/-	Rs.----- -/-
7	Service rendered by Shri ----- ----- S/o Shri ----- attached with ----- Rly. -----	Rs.-- - -/-	Rs.----- -/-

A copy of the Award will be given to the parties on payment of the aforesaid dues, either in cash or by money order only.

(-----)
Co-Arbitrator &

CC: for information to:-

1. General Manager/Engg. N.Rly., in ref. to his letter No. ----- dated ----
----- . In all ----- sittings were held including the sittings required
for examination of file and publication of the award, ----- number of
hearings are more than two hours duration and ----- hearings are of less than
two hours duration.
2. C.P.O., N.Rly. ----- for information & necessary action please.
3. Copy to Sh. ----- & Co-Arbitrator ----- Rly., ----- for information
please.
4. Copy to Sh. ----- & Presiding Arbitrator, ----- Rly. ----- for
information.



Annexure - VII

NORTHERN RAILWAY

-----,

No.-----

Dated

1) ----- (Claimant),

2) ----- (Respondent),
Northern Railway,

Sub:- -----

Enclosed please find a copy of the Award given by me in the above noted Arbitration case.

Please acknowledge the receipt.

DA/As above.

(-----)
Sole-Arbitrator &
designation etc.



**LIST OF EXCEPTED MATTERS & OTHER CLAUSES
OF G.C.C. PROHIBITING CERTAIN OTHER PAYMENTS**

- Clause 8(Page20)** No claim for **material agreed to be supplied by Railway** owing to difficulty in obtaining it in market. The contractor shall have no claim.
- Clause 16 (3)** No claim of interest on EM, SD on amounts payable to the contractor.
- Clause 17 A (iii)** No claim (but may be extra of DOC) for delay by Railway.
- Clause 17 (B)** Penalty shall be imposed on contractor for delays.
- Clause 18** No claim made by contractor, for amount paid for illegal **gratification** paid to any Railway servant for execution of the contract, shall be referred for arbitration. (ii) No compensation shall be paid to contractor for any monetary transaction made with any Railway employee. No monetary dealings with staff.
- Clause 19 (1)** Location of work, ground condition, material and equipments etc. required to carrying out the work.
- Clause 22 (5)** In case of any ambiguity as to the meaning and interest of specification & drawings or as to execution of work or quality of work / material, the **decision of Engineer concerned shall be final**. Any claim thereto shall be excepted matters. To be brought into notice of engineer within 7 days.
- Clause 27 (1)** No claims for material testings.
- Clause 28** No claims for inspection facility.
- Clause 31** Water / Electricity supply.
- Clause 34** No claims for safety precautions.
- Clause 36** Suspension of work (No extra payment but may be DOC extension).
- Claim 39** Rates for extra item of work included in SOR as agreed upon by the Engineer and contractor, the contract shall be binding on the contractor. Thereafter in case of **failure on the part of contractor**



to execute the extra work, the contractor shall not have any claim for loss or damage. Notice to engineer of at least 7 days.

- Clause 43 (2)** The contractor shall not be entitled for any claims after he has signed the **“No Claim Certificate”** after the work has been finally measured up.
- Claim 45/A** No claim regarding the accuracy and classification of **measurements** shall be entertained once the measurement has been taken **in the presence of contractor**.
- Clause 55** No compensation for any claims for not complying with provisions of **payments of Wages Act**.
- Clause 55 (A)** No compensation for noncompliance of **Contractor Labour Act**.
- Clause 57** No compensation for noncompliance of **Workmen Compensation Act**.
- Clause 57/A** No claims for noncompliance of provisions of **Mines Act** shall be entertained.
- Clause 61 (1)** Contractor shall have no claims if the contract is determined/terminated by Railway in **view of paucity** of funds except for the value of approved materials at site and for work done to date by the contractor.
- Clause 61 (2)** No claims of contractor to be entertained for expenditure incurred by him in **expectation of completing the whole work** except those claims which are reasonable and supported by documents Railways decision in this regard shall be final.
- Clause 61 (3)** Contractor shall have no claim to any payment of compensation on account of any profit or advantage which he might have derived from **execution of work in full but** could not be derived **due to determination of contract**.
- Clause 64.6** **Arbitration** fee is to be born equally by claimant as well as by the respondent.



SUMMARY OF COURT JUDGEMENTS RELATED WITH ARBITRATION CASES.

BY R.K.YADAV, Sr. Professor, Track/IRICEN/PUNE

CASE-1 Jurisdiction of arbitrator – Arbitrator can not award any amount ruled out by Terms of Agreement.

Judgement:- **Court – Supreme Court (B.P.Jeevan Reddy and Mrs. Sujata V.Manohar, J.J.)**

Date of Order – 17-02-1997.

Case – AIR 1997 Supreme Court 980 – Civil Appeal No.808 of 1997 arising out of SLP (C) No.20853 of 1996, in case of New India Civil Engineers (P) Ltd. (Applicant) vs. Oil and Natural Gas Corporation (Respondent).

Important observations made by Hon'ble Judges are:-

(A) Contractor's own letter stipulating as to exclusion of balcony area at time of measurement – Tender condition also to same effect- Amount calculated by including balcony area not justified – arbitrator cannot award any amount ruled out by terms of agreement.

The arbitrators over stepped their authority by including the area of the balconies in the measurement of the built up area. It is aesthetic that the arbitrator being a creature of the agreement must operate within the four corners of the agreement and cannot travel beyond it. More particularly, he cannot award any amount, which is ruled out or prohibited by the terms of the agreement.

(B) Express stipulation between parties as to price being firm and not subject to any escalating till completion of work-Contractor was not entitled for escalation for work completed after expiry of period of contract – Award granting such amount beyond authority of Arbitrator.

The above price is firm and is not subject to any escalation under whatsoever ground till the completion of the work.

The learned arbitrators, could not therefore have awarded any amount on the ground that the appellant must have incurred extra expense in carrying out the construction after the expiry of the original contract period. The aforesaid stipulation between the parties is binding upon them both and the Arbitrators.

This is not a case of the arbitrators constructing the agreement. It is a clear case of the arbitrators acting contrary to the specific stipulation/condition contained in the agreement between the parties. We, therefore, affirm the decision of the Division Bench on this account as well.



“.....if the parties set limits to action by the arbitrator, then the arbitrator had to follow the limits set for him and the Court can find that he exceeded his jurisdiction on proof of such excess.....”

CASE-2 Excepted Matters:- As per Clause 63 of GCC excepted matters are not arbitrable. (Cases governed under 1940 Act).

Judgement:- **Court-Hon'ble Supreme Court (R.C.Lahoti, J. and Brijesh Kumar, J.)**
Date of Order – 01-03-2002
Case-in SLP filed by Union of India V/s Sarvesh Chopra, Contractor

In the judgement, the Hon'ble Judges have deliberated upon at length the issues of excepted matters and its arbitrability. Hon'ble Court, in fact, has upheld the contention of the Railway about the excepted matters that these matters should not be allowed to be arbitrated upon. The important observations made by the learned Judges are given below:-

- (i) **To be an excepted matters, it is not necessary that a departmental or inhouse remedy for settlement of claim must be provided by the contract Merely for the absence of provision for inhouse settlement of the claim, the claim does not cease to be an excepted matter.**
- (ii) **It would be an exercise in futility to refer for adjudication by the arbitrator a claim, though not arbitrable, and thereafter, set aside the award if the Arbitrator chooses to allow such claim. The High Court was, in our opinion, not right in directing the said 4 claims to be referred to arbitration.**
- (iii) **We cannot subscribe to the view that interpretation of arbitration clause itself can be or should be left to be determined by arbitrator and such determination cannot be done by Court at any stage.**

CASE – 3 Payment of interest on any amount not admissible as per Clause-16 (3) of GCC.

Judgement:- **Court – Hon'ble High Court Guwahati (J.N.Sarma, C.J.)**
Date of order – 19-06-02.
Case – Arbitration appeal filed by Union of India represented through N.F. Railway/Con/MLG Vs Major V.Najhawan Reta, Contractor.

Important observations made by Hon'ble Judges are:-

“Clause – 16 (3) of General Condition of Contract reads as under – No interest will be payable upon the earnest money or the security deposit of amounts payable to the contractor under the contract, but Government Securities deposited in terms of sub-clause (1) of the clause will be repayable with interest accrued thereto.



Sub Clause (3) of Clause – 16 of the General Conditions of Contract prescribes such prohibition and, therefore, the Arbitrator does not get any jurisdiction to grant interest to the contractor. When there is prohibition in the contract for grant of interest, in view of the Apex Court Judgement, the Arbitrator does not have jurisdiction to grant interest and no fruitful purpose will be served by remanding the matter to the Arbitrator on the question of interest. The Arbitrator's jurisdiction to grant interest, in view of the terms of the contract, is not available. **That being the case, the directions issued by the court below remanding the matter for fresh adjudication on the question of interest is illegal and contrary to the provisions. Consequently, this appeal is allowed, the order dated 16-03-2001 passed in Misc (J) Case No.154/2000 arising out of T.S. (Arb) Case No.229/95 by the learned Civil Judge Senior Division No.1, Guwahati is set aside to that extent”.**

CASE – 4 Appointment of Arbitrator – Where the agreement specifically provided for appointment of two gazetted Railway Officers of equal status as arbitrators, held, High Court erred in appointing a retired Judge as the sole arbitrator – Appointment of sole arbitrator set aside- Arbitration Act, 1940.

Judgement:- Court- Hon'ble Supreme Court, (V.N.Khare, CJ and S.B.Sinha and S.H. Kapadia J.J.)
Date of Order – 05-02-2004.
Case – (2004) 10 Supreme Court case 504, Civil Appeal No.2053 of 1999 in case of Union of India and another Vs M.P. Gupta.

Important observation made by Hon'ble Judges are:-

“The relevant part of clause 64 runs as under:-

64 Demand for arbitration – (3) (a) (ii) the arbitrators who shall be gazetted railway officers of equal status to be appointed in the manner laid in clause 64 (3) (b) for all claims of Rs.5,00,000/- (Rupees Five Lakhs) and above, and for all claims irrespective of the amount or value of such claims if the issues involved are of a complicated nature. The General Manager shall be the sole judge to decide whether the issues involved are of a complicated nature or not. In the event of the two arbitrators being undecided in their opinions, the matter under dispute will be referred to an umpire to be appointed in the manner laid down in sub-clause (3) (b) for his decision.

(3) (a) (iii) It is a term of this contract that no person other than a gazetted railway officer appointed by the General Manager as afore-said should act as an arbitrator/umpire and if for any reason, that is not possible, the matter is not to be referred to arbitration at all.

In view of the express provision contained therein that two gazetted railway officers shall be appointed as arbitrators, Justice P.K.Bahri could not be appointed by the High Court as the sole arbitrator. On this short ground along, the judgement and order under challenge to the extent it appoints Justice P.K.Bahri as Sole Arbitrator is set aside.



CASE – 5 Court’s Jurisdiction Under Section 34 of the Arbitration and Conciliation Act, 1996 - **If the award passed by the arbitral is in contravention of provisions of the Act or any other substantive law governing the parties or is against the terms of the contract is considered patently illegal and this could be set aside under Section 34.**

Judgement:- Court – Supreme Court of India

Bench: ;M.B.Shah & Arun Kumar

Date of Order: 17-04-2003.

Case – in case of Oil & Natural Gas Corporation Ltd. (Petitioner) Vs Saw Pipes Ltd. (Respondent) case No.: Appeal (civil) 7419 2001 of 518.

Important observation made by Hon’ble Judges are:-

“The question therefore, which requires consideration is – whether the award could be set aside, if the arbitral tribunal has not followed the mandatory procedure prescribed under Sections 24, 28 or 31 (3), which affects the rights of the parties? Under sub-section (1) (a) of Section 28 there is a mandate to the arbitral tribunal to decide the dispute in accordance with the substantive law for the time being in force of India.

Sub-section (3) arbitral tribunal is directed to decide the dispute in accordance with the terms of the contract.

If the arbitral has not followed the mandatory procedure prescribed under the Act, it would mean that it has acted beyond its jurisdiction and thereby the award would be patently illegal which could be set aside under Section 34.

However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest.

CASE – 6 Appointment of Arbitrator as per Section – 11(6) of Arbitration Act 1996. **As per 11(6) of Act where procedure for appointment of arbitration has been agreed upon, a party fails to act as required under that procedure and then if other party approaches Chief Justice of a High Court, Chief Justice instead of appointing independent arbitrator should take necessary measure for appointment of arbitrator as per agreement.**

Judgement:- Court – Division Bench of Kerala High Court (K.S.Radhakrishna and M.N. Krishnan J.J.)

Date of Order – 20-12-2004

Case – In case of National Thermal Power Corporation Ltd. Vs Raghul Construction Pvt. Ltd., (WP(C)No.28254, 28256, 28257 and



28233 of 2004) (AIR 2004 Kerala 115) set aside order of single Judge of Kerala High Court for appointment of arbitrator.

Important observations made by Hon'ble Judges are:-

The expression “necessary measures” and the expression “securing appointment” are absent in a case where there is no agreed procedure. In case where there is no agreed procedure the Chief Justice can make an appointment. In a case where there is agreed procedure the Chief Justice or the person or institution designated by him has to take necessary measures so as to secure appointment as per the agreed procedure. In our view endeavour must be to give effect to that procedure and not to annihilate it.

In our view learned single Judge should have taken necessary measures for securing appointment on the basis of the appointment procedure.

CASE – 7 The power exercised by the Chief Justice of High Court or the Chief Justice of India under Section 11 (6) of the Act is not an administrative Power. It is a judicial power.

Judgement:-**Court – Constitution Bench of Hon'ble Supreme Court (CJI RC Lahoti, B.N.Agarwal, Arun Kumar, G.P.Mathur, A.K.Mathur, P.K. Balasubramanyam)**

Date of Order – 26-10-2005

Case – Case No. appeal (Civil) 4179 of 2003, M/s S.B.P. & Co., Vs M/s. Patel Engineering Ltd. & ANR.

Important observations made by Hon'ble Judges are:-

We, therefore, sum up our conclusion as follows:-

- (i) The power exercised by the Chief Justice of the High Court or the Chief Justice of India under Section 11(6) of the Act is not an administrative power. It is a judicial power.**
- (ii) The power under Section 11(6) of the Act, in its entirety, could be delegated, by the Chief Justice of the High Court only to another judge of that court and by the Chief Justice of India to another judge of the Supreme Court.**
- (iii) In case of designation of a judge of the High Court or of the Supreme Court, the power that is exercised by the designated judge would be that of the Chief Justice as conferred by the statute.**
- (iv) The Chief Justice or the designated judge will have the right to decide the preliminary aspects as indicated in the earlier part of this judgement. These will be, his own jurisdiction, to entertain the request, the existence of a valid arbitration agreement, the existence or otherwise of a live claim, the existence of the condition for the exercise of his power and on the qualifications of the**



- arbitrator or arbitrators. **The Chief Justice or the judge designated would be entitled to seek the opinion of an institution in the matter of nominating an arbitrator qualified in terms of Section 11(8) of the Act if the need arises but the order appointing the arbitrator could only be that of the Chief Justice or the judge designate.**
- (v) Designation of a district judge as the authority under Section 11(6) of the Act by the Chief Justice of the High Court is not warranted on the scheme of the Act.**
 - (vi) Once the matter reaches the arbitral tribunal or the sole arbitrator, the High Court would not interfere with orders passed by the arbitrator or the arbitral tribunal during the course of the arbitration proceedings and the parties could approach the court only in terms of Section 37 of the Act or in terms of Section 34 of the Act.**
 - (vii) Since an order passed by the Chief Justice of the High Court or by the designated judge of that court is a judicial order, an appeal will lie against that order only under Article 136 of the Constitution of India to the Supreme Court.**
 - (viii) There can be no appeal against an order of the Chief Justice of India or a judge of the Supreme Court designated by him while entertaining an application under Section 11(6) of the Act.**
 - (ix) In a case where an arbitral tribunal has been constituted by the parties without having recourse to Section 11(6) of the Act, the arbitral tribunal will have the jurisdiction to decide all matters as contemplated by Section 16 of the Act.”**