



सत्यमेव जयते

অসম চৰকাৰ

Govt of Assam

HANDBOOK ON

Handling Court Matters



Assam Administrative Staff College

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ARTPPG Department, GoA

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মুখ্যমন্ত্রী, অসম
Chief Minister, Assam



FOREWORD

The work environment across the globe is undergoing rapid changes, and the utilization of human resources is evolving accordingly, with Assam being no exception. To keep pace with these changes, it is imperative that the Assam government focuses on empowering its human resources with a global outlook while remaining grounded in Indian values.

To achieve this vision, our government is implementing effective changes in work culture and striving to instill new ideas and a broader perspective in the minds of the officials. In line with this effort, the ARTPPG Department of the Government of Assam is introducing a set of training manuals and handbooks. Our Government is ensuring the smooth functioning of the daily administration with the help of these Training Manuals/ Handbooks for the Grade-3 officials. To effectively cater to the requirements of Grade-3 officials, experts have meticulously drafted the training manuals and handbooks, aiming to cover a wide range of relevant topics. Moreover, focused attempts have been made to embed the books with relevant case studies, examples and FAQs on different topics to enable the users to adapt to the procedural yet divergent needs of today's dynamic administration.

True to the objective of our Government in creating a spirited workforce, introduction of multifaceted learning and training programme have been thought of to enable our officials realize their true potential. This would help them to reorient themselves to the day-to-day administrative developments while performing their duties with honesty and transparency.

I believe the Training Manuals / Handbooks will hold immense value as a guiding light on diverse professional trajectories. They will also serve as a roadmap to steer capacity building of the Grade-III officials in a systematic and coherent manner.

(Dr. Himanta Biswa Sarma)

Dr. Ravi Kota, IAS
Chief Secretary
Government of Assam



ড° ৰবি কোটা, ভাঃ প্ৰঃ সেঃ
মুখ্য সচিব
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Preparation of a Training policy of a State and aligning it with the needs of the variegated workforce which has to constantly prove its relevance in this era of transition towards technology forms the very backbone of the administration in the form of a challenging task. In this due course of action, capacity building of Grade-III officials not only requires them to remain efficient in their daily official duties but also must be able to motivate them to work, learn and evolve in a comprehensive manner.

The present District training manuals for Grade-III officials have been prepared under the aegis of the Administrative Reforms Training Pension and Public Grievances Department (ARTPPG) and the Assam Administrative Staff College (AASC), who were aided by renowned experts and stakeholders from all the concerned fields. The manuals are a product of much detailed and multiple deliberations on the requisite subjects and it also includes valuable inputs from The Institute of Secretariat Training and Management (ISTM), Delhi in certain applicable topics. The Training Needs Assessment (TNA) was diligently conducted by AASC to chalk out an inclusive need based approach suited for a bottom up perspective for the Grade-III officials and also to ensure that no vital subject has been overlooked.

I believe that the Training manuals will help the Trainers and the trainees as well in a holistic manner and I earnestly request all concerned to send us feedback which would be of great help when we take up further revisionary exercises.

(Dr. Ravi Kota)
Chief Secretary, Assam

Shantanu Gotmare, IAS
Commissioner & Secretary
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MESSAGE

The Department of Administrative Reforms, Training, Pension and Public Grievances (ARTPPG) plays a vital role in the formulation of the State Training Policy and training it's civil servants to build capacity for improving 'Ease of Living' for people of Assam.

The content of the district training manuals aims to bolster capacity of the Grade-3 employees in an elaborate and lucid manner. We have worked meticulously to prepare content of the manuals by collaborating with experts and have actively collated through appropriate stakeholders, which objectively present a comprehensive picture for the officials, covering a broad spectrum of their daily official duties.

I express my sincere thanks to the Committee for vetting the full content. ARTPPG acknowledges the contributions of Committee Members in the preparation of the training manuals. Special mention must be made to the Assam Administrative Staff College, Khanapara and my team in ARTPPG Department for relentless work to get the training manuals.

I sincerely hope that that these manuals will be extremely useful to the trainers, trainees and as well as the officials.

(Shantanu Gotmare)



Foreword

The District Training Manuals for Grade-III officials of the Government of Assam have been designed by the Assam Administrative Staff College (AASC) with the help of renowned guest faculty and experts under the able guidance of the Administrative Reforms, Training, Pension and Public Grievances (ARTPPG) Department and inputs from the Institute of Secretariat Training and Management (ISTM), New Delhi.

I hope these manuals will be used extensively by the trainers and trainees and will help the officials become more knowledgeable, competent and productive at their work places.

I would like to convey my gratitude to all the renowned guest faculty and to all the individuals associated with the successful publication of the manuals for their inputs and support throughout the process of designing and printing these manuals.

A handwritten signature in blue ink, appearing to read 'Riju Gogoi', written in a cursive style.

Riju Gogoi
Director of Training
Assam Administrative Staff College

Handling Court Matters

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Introduction

High number of court cases these days is a matter of concern for the Government.

At the District level, most of the court cases are related to service matters. The aggrieved government servants resort to litigation to get remedy in service matters like confirmation, promotion, seniority, pay fixation and so on.

It is necessary to minimize the number of court cases by resorting to effective administration. Objective and expeditious dealing of the genuine grievances of the employees is always helpful in minimizing litigation by the employees.

Despite that getting rid of court cases is next to impossible. Judiciary is an independent organ of the state under the Constitution of India. No Government ever interferes in the functioning of the judiciary. As such, it is necessary to strengthen the administrative machinery to handle the court cases in an efficient and time bound manner.

It is stated that if officers at the helm of affairs are duly aware of administrative laws and observe basic **principles of natural justice**, many litigations can be avoided.

No administrative action can be taken on any issue subject matter of which is sub-judice

Government cannot request a court to expedite proceedings of any particular case. Hence, Government cannot take any action even if there has been inordinate delay in disposal of the case.

A judicial order can be challenged only before appropriate court of law following prescribed procedure.

Hierarchy of courts in India

1. **Supreme Court** - it is the Apex Court of the country. It is the highest court of appeal and enjoys both original suits and appeals of High Court judgements.
2. **High Courts** - it is the highest judicial body at the state level. High Courts may take appeals from Lower Courts.
3. **District Courts** - These are established by the State Governments of India for every district or group of districts. District Courts are under the direct administration of High Courts and are bound by High Court judgements. There are two kinds of courts
 - Civil Courts
 - Criminal Courts

4. District Courts are presided over by District Judges, Additional District Judges and Assistant District Judges. Appeal against District Court judgements lie in the High Court.
5. **Lok Adalats/Village Courts** - These are subordinate courts at the village level and provide system of alternative dispute resolution in villages.
6. **Tribunals** - The Constitution of India provides for setting up of special Tribunals for the administration specific matters such as tax cases, land cases, consumer cases etc.

Civil Courts

In India, Civil Courts provide remedies for civil wrongs committed by individuals against other individuals and entities. Civil court matters range from property disputes to breaches of contract to divorce cases. Civil Courts follow the principles of **“for every wrong the law provides remedy”**.

The Civil Procedure Code, 1908 governs the procedures to be followed by Civil Courts.

Every suit must be instituted before the court of lowest jurisdiction (the **Munsif** Court). Upon institution, it is decided if the respective court has competence to try the case.

The Civil Court hierarchy in the district

1. **District Court** - the court of District Judge is the highest Civil Court in the district. The courts of District Judges exercise both judicial and administrative functions.
2. **Sub-Judge Court** - if the value of the subject matter is more than Rs. 1.00 lakh, the Sub-Judge and Additional Sub-Judge Courts may try the suit.
3. **Additional Sub-Judge** - created based on the case load.
4. **Munsif Court**- If the value of the subject matter is worth Rs. 1.00 lakh or less, the Munsif Court is competent to try the suit.

To note:

- a. The person who files a Suit is known as Plaintiff
- b. The Civil Proceedings are known as Plaint
- c. The person against whom Suit is filed is known as Defendant
- d. The Defendant files Written Statement in reply to the averments in the Plaint

Criminal Courts

1. A Criminal Court is a court that has the jurisdiction and authority to try and punish the persons accused of committing a crime as per criminal law in force in our country.
2. In general, Government files a case in criminal courts against a person who has committed any crime.

As per section 6 of the CrPC, apart from the Supreme Court and High Courts and Courts set up under any law, the following courts must be there in every state

- a. Sessions Court
- b. Judicial Magistrate of the First Class (Metropolitan Magistrates in the metropolitan area)
- c. Judicial Magistrate of the Second Class
- d. Executive Magistrates

Binding value of Judicial Precedents

- a. Decisions of the Supreme Court are binding on all courts in India. Supreme Court is not bound by decisions of High Courts, lower courts and any other judicial authorities
- b. Decisions of High Courts are binding on all lower courts (as long as these do not conflict with Supreme Court decisions) within its jurisdiction. In case the decisions of the High Court conflict with the decisions of a similar bench, the matter is referred to a higher bench.
- c. Lower courts are bound by decisions of higher courts in their own states. Decisions of High Courts of other states hold only persuasive value.

Court Proceedings

1. Writ Petitions (WP) before Supreme Court or High Court
2. Original Application (OA) before CAT/SAT (State Administrative Tribunal)
3. Original Suits (OS) before Civil Courts
4. Proceedings before Lokayukta
5. Proceedings before Human Rights Commission

Writ Proceedings

1. **Article 226** of the constitution of India empowers the High Court to issue Writs of **Habeas Corpus** (A writ to assert personal liberty, to liberate a person from illegal custody), **Mandamus** (A Command issued to the state or authority requiring performance of a particular duty), **Prohibition** (Preventing Tribunal or lower courts or Administrative Authorities from continuing their proceedings in excess or abuse of their jurisdiction), **Quo Warranto** (Enquiries into the legality of the claim to a Public Office and Oust him from its enjoyment if the claim is not well founded) and **Certiorari** (Judicial control for review of lower courts or Tribunals and Administrative Action if Ultra Vires).
2. Article 32 of the Indian Constitution empowers the Supreme Court of India to issue similar Writs. A citizen can move Supreme Court or High Court for enforcement of Fundamental Rights under the Constitution of India, if violated by State or any organ of the State.

Writ Procedures

- a. Writ Petitions are filed stating the facts and grounds and an Affidavit is filed in support of the facts.
- b. **Affidavit:** it is a statement on oath by the Deponent stating the facts known **personally based on information and on belief**. A signature is made at the end of the Affidavit with date and place. It is to be attested by a person who is authorized to administer oath and attest.
- c. **Counter-Affidavit:** the respondents in the Writ Petition files a counter affidavit as an answer to the averments (Affirmation/allegation) made in the Writ Petition.

Original Application before Administrative Tribunals

1. **Article 323** of the Constitution of India empowers the Parliament to establish Administrative Tribunals to adjudicate disputes and complaints in respect of recruitment, conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or State or any local or other Authority.
2. Parliament of India enacted the **Administrative Tribunal Act, 1985**.
3. Central Administrative Tribunals and State Administrative Tribunals are established as per the above-mentioned Act.
4. The Applicant files an application in support of his plea.
5. The Respondent files **Written Statement** in CAT and **Counter Affidavit** in State Administrative Tribunal in reply to the Application as above as per Rules applicable.

6. CAT deals all service matters of All India Services, Civil Services or Civil Posts under the Union of India.
7. The State Administrative Tribunal deals all service matters concerning recruitment and matters concerning recruitment and service matters to any civil service of the State or to any civil post under the State Government

Precautions required to be observed in Legal Proceedings and Promptness

1. In Legal Proceedings **public interest** is the utmost consideration.
2. The stand of the State or institution or public servant is different than an individual.
3. No personal interest shall ever be demonstrated.
4. Facts to be presented without any distortion or adding color. Truth and truth alone shall be stated.
5. Consequences of the false pleadings are serious. Should always be careful.
6. Top priority is to be assigned to court proceedings.
7. Promptness is an important issue. Should always avoid delay in submitting Para-wise comments.
8. If there is an interim order issued by a court then it is important to take immediate steps to vacate such orders.
9. If final orders are issued by the Courts, then it should be carefully examined and to seek instructions for implementation or assailing/appealing the same before the higher courts.
10. It is not advisable to wait for long as law of limitation may be attracted.

Affidavit in Writ Petition

- a. In reply to Court Proceedings in connection with a Writ Petition, a Counter Affidavit has to be filed by one of the respondents or all the respondents.
- b. The Affidavit should contain all the facts and pleas that are proposed to be projected by the Respondents.
- c. The facts if known personally to the deponent, he needs to state the same in the Affidavit itself. Similarly, if facts are based on information, then the sources of information are required to be furnished.
- d. If facts are based on belief, then the grounds for such belief have to be stated in the Affidavit.

Para-wise Comments in Civil Proceedings

1. There are Government Advocates in all the Courts to represent Government in Civil Proceedings.
2. Generally, the Affidavits are drafted by the Government Advocates.
3. The materials to draft an Affidavit is to be supplied by the grassroot level officials (in general) who are acquainted with the facts.
4. The concerned officer offers his remarks to the contents of the Writ Petition or Original Application or Original Suits by way of para-wise remarks/ observations based on available records and information available.
5. They are commonly known as Para-wise Comments.

May note that all legal defenses such as limitation, jurisdiction, failure to exhaust statutory remedies, want of statutory notices under section 80 of Civil Procedure Code, 1908, any other legal bar shall be pleaded

6. The name of the Court/Tribunal shall be stated at the top of the Affidavit. Then, the names of party on whose behalf Affidavit is filed shall be stated
7. Any person acquainted with the facts can file an Affidavit.
8. The Affidavit should always be in the first person unlike complaints or petitions and written statements.

Written Statement

1. In Civil Suits as per the CPC and in Original Application before CAT, the respondents are required to file **Written Statements** in answer. As done by affidavits in Writ Petitions.
2. It can be filed by Respondent or a person authorized.
3. All averments in complaint or Original Application shall be specifically admitted or denied. Otherwise, **they will be deemed to have been admitted.**
4. Should be drafted in clear paragraphs. All paragraphs need to be numbered serially.

Procedure that is followed

1. All averments in Writ Petitions or in Original Applications or in Original Suits or before any other proceedings are to be answered by Para-wise Remarks on the basis of available records or file or information collected/ obtained for the purpose.
2. If there are repetitions in the WP, OA/OS etc. remarks need not be repeated.
3. Remarks should be specific and to the point.
4. It is always desirable to avoid vague and evasive remarks.

5. Denials if required to be made, should also be specific.
6. It is advisable to separately jot down all the points required to be answered in order to avoid missing any point.

Legal Stand

1. Legal grounds as pleaded should be answered in Para-wise Comments with regard to sections of Act, rules etc.
2. Regarding reference to judgement of Supreme Court or High Courts, it is desirable to leave the matter to the Government Pleader or to the higher officials who are well versed in such matters.
3. If judgement or order of SC or HC are available in respect of similar matters, then furnish the information in the comments.

Appeals, Review and Revision

1. An appeal is asking a higher court to review and if needed, to reverse the decision of the lower court and to turn it in the losing party's favour after the final judgment has been given.
2. Review means when the court re-examines the decisions made by itself. Section 115 of CPC, 1908
3. Revision means re-examining the case involving improper inference, non-exercise or inappropriate jurisdictional exercise.
4. Whenever orders **adverse to the interest of Government** are passed by any court, prompt action is required to be taken to file Appeal or Revision.
5. Against orders of lower Civil Courts, appeals may be filed before a higher court
6. Against interim order of Civil Courts/Tribunals and regular orders of Tribunals only, **Revisions** lie to High Court.
7. Against orders of single Judge of High Court, appeal lies to Divisional Bench of High Court and in other cases to the Supreme Court.
8. It is necessary to take legal advice to go ahead or not.
9. Advisable to consult **National Litigation Policy** for guidance.

Pending cases should be regularly reviewed

1. It is desirable to resort to periodical review of pending cases in an establishment.
2. It is necessary that progress is monitored regularly and prompt action taken for early decision and also to avoid delays on the part of Government.
3. Help of technology is a welcome move. Database should be created in the office computer in respect of all the cases together with stage. Technology makes it easier to monitor.

Verification of Pleading

1. Every pleading shall be verified at the foot by the party or by any of the parties or by an authorized person acquainted with facts of the case.
2. The verification shall state with reference to the paragraphs, which are to his personal knowledge and which are based on information which he believes to be true.
3. It should be signed by the person verifying in support of such pleading.
4. He shall also file an Affidavit in support of such pleading
5. It shall be signed by the party and the pleader.
6. All corrections shall be duly attested and pages numbered.

Enclosures

1. The copies of all documents relevant to the proceedings shall be enclosed.
2. Copies of orders passed, permits or licenses issued shall be enclosed.
3. If necessary, copies of office notes are also to be enclosed.
4. If copies of SC/HC on relevant matters are available are to be furnished.
5. Copies of Government Orders if any should be enclosed.

A Few Suggestions

1. In Para-Wise comments or Affidavits or in Written Statements it should be ensured that only appropriate words are used.
2. Simple sentences should be used in stating facts.
3. Appropriate active or passive voice may be used in sentences.
4. There should not be any grammatical mistake in the comments or in the Affidavits.
5. Para and pages are to be numbered clearly.
6. Abusive or inappropriate language should be avoided.
7. Comments should be to the point.
8. Should not exhibit prejudice in the comments.

CASES (OTHER THAN WRIT PETITIONS) AGAINST THE GOVERNMENT

(UNDER SECTION 80 of Civil Procedure Code)

In such cases, a notice is initially received by the concerned authority of the District.

When a notice under Section 80, Civil Procedure Code is served on a District

Officer and it relates to a department not under his control, he shall the same day forward it to the Head of the Department concerned.

If the notice relates to department under his control, the officer receiving the notice shall make a thorough enquiry into the circumstances of the case and obtain opinion of the Government Pleader thereon. Here, it must be remembered that it is not the business of the Government Pleader to ascertain the facts of the case. The District Officer must consider carefully whether the matter is one which should be settled out of court. If he considers that the matter should be so settled, he shall make attempts to arrange with the notice-giver without prejudice to the terms of settlement. And submits to superior authority for sanction.

The officer will also get to prepare Para-wise Comments along with a detailed report containing the history and all particulars of the case and copies of relevant documents and specify whether it is a case for settlement. If so, the proposed terms of settlement and all particulars necessary to arrive at a settlement. The concerned authority shall examine the claim made in the notice and take a final decision as urgently as possible.

He shall then submit the case to the Legal Remembrancer, Assam Secretariat, Dispur along with all relevant documents/facts. (However, in small cases it is to be forwarded to the concerned Commissioner only). Must be submitted within one month.

The notice may be in respect of:

1. a claim which has already been examined and has been rejected;
2. a claim which is still under consideration;
3. a claim which is yet to be examined.

The concerned authority shall in regard to a claim of the first category consider whether any new point which has not been examined earlier has been raised in the notice, such a new point, if any, shall be thoroughly examined and it shall be considered whether the earlier decision requires to be modified.

In regard to a claim of the second and third categories, it is to be examined and a decision is taken as early as possible in consultation with the Government Pleader. While making a reference to the Government Pleader the concerned authority shall prepare and forward a self-contained note giving the entire history of the claim and Para-wise Comments on the various allegations made in the notice, along with all relevant documents and materials. If it is decided that the claim is genuine and requires to be admitted, the concerned authority shall take action to settle the claim forthwith and if it is decided to contest the claim or to admit the claim in part, no reply shall be sent without consulting the GP.

Whenever the Government Pleader receives a summons, he shall note the date of receipt on the back of the summons, and shall at once forward it, with a copy of the plaint, to the District Officer.

Upon receiving the copy of the plaint and summons from the Government Pleader, the District Officer shall note the date of such receipt and shall at once proceed to ascertain the facts of the case.

If the District Officer is of the opinion that the suit should be defended, he shall return the copies of the plaint and list, with a statement of the facts of the case and the evidence available to support the facts and with all material documents, to the Government Pleader to draft the written statement. The District Officer may arrange to explain the facts to the GP through a competent official acquainted with the facts.

The GP then shall return the papers to the District Officer with his opinion, and if he considers that there is a good ground, he shall draft the necessary written statement and prepare a list of documents and send it to the District officer who will use it in the court in appropriate time. The GP will also give his observation of the case as he may deem fit.

After receiving the papers the District officer will make a reference to the Legal Remembrancer (or in Small Cause Court Cases to the Commissioner) forwarding at the same time copies of the following papers :

1. The statement of facts
2. The plaint
3. Such of the documents as are necessary to enable the LR to understand the case
4. The draft written statement as prepared by the GP
5. The opinion of the GP
6. So much of the documentary evidence as is relevant to the case

Whenever the District Officer receives a summons' to written statement against Government, he shall cause an enquiry to be made as to whether there are grounds for proceeding against the plaintiff under provision of CPC, 1908 and, if necessary, shall direct the Government Pleader to take action under the said Act.

As the party who has sent the notice could institute a case on the expiry of sixty days, the examination of the claim shall be completed by then and reply, if so decided, shall be sent within sixty days.

Every suit notice shall, therefore, be treated on "top priority basis" and dealt with accordingly.

When a suit is brought against Government without the notice required by section 80, Civil Procedure Code, having been served, the Government

Pleader should at once apply to the court to dismiss the suit on the ground that it has been instituted contrary to the provisions of that section.

CASES (OTHER THAN WRIT PETITION) FILED AGAINST THE GOVERNMENT

Cases filed in Subordinate Courts

1. When a case other than a Writ Petition is instituted against the State in any subordinate court and summons/notice is served on any officer of the Government, such officer shall immediately request the concerned Government pleader to appear for the Government and ensure that the case is not decided **ex-parte** and prepare or obtain from the concerned officer, a detailed report of the facts and history of the case and circumstances leading to the institution of the suit together with the Para-wise Comments in respect of the averments made in the petition or plaint, as early as possible. If necessary, may consult other departments as well. The detailed report as mentioned above may also indicate the name of the officer who is conversant with the matters and facts of the case, the name of the officer who is to verify and sign the pleadings, the defence that has to be taken in the case and the documentary and other evidence, in support of such defence. Copies of all documents necessary for defending the case and the relevant files relating to the matter shall form part of the report.

In short, the report should be the brief of the Government to the Government Pleader

2. Where a summon or notice in a case is addressed to the Chief Secretary to Government, the same shall be received by the Head of the Department. The GP shall send a request to the concerned officer to appear on behalf of the Government, and also forward a copy of the pleading received by him to the Secretary of the Administrative Department and to the Head of the Department for taking necessary action, to offer remarks and to forward the report and papers indicated above in para 1.

Criminal Cases.-

CRIMINAL CASES.

1. It shall be the duty of the Prosecutor to ensure that necessary and proper charges are framed against the accused and their plea recorded according to law. The Prosecutor shall take care to get the charge amended wherever necessary.
2. The Prosecutor shall take necessary steps to get the summons/warrants issued by the court to secure the presence of the witnesses. He should also instruct the police to keep necessary number of witnesses in attendance. It shall be the duty of the Prosecutor to conduct prosecution in accordance with law and examine all necessary witnesses to place the entire case of the prosecution before the court. The Prosecutor shall ensure the marking of

all the documents and exhibits and properties as material objects through the concerned witnesses required for proof of the charges framed against the accused.

3. The Prosecutor shall take all necessary steps to obtain co-ordination and co-operation of the police for getting the summons served and warrants executed on the witnesses/accused, as the case may be, and the same are returned to the court well in time and to enforce the attendance of the witnesses in general, and police and official witnesses and investigating officers in particular, for giving evidence before court. He shall render necessary assistance to the court during hearing, and trial of the case for smooth and speedy disposal of the criminal cases.
4. On the commitment of the case by the Magistrate to the Sessions Court, the Prosecutor shall forward the case papers to the concerned authority as early as possible.
5. In every case ending in acquittal or where there is a conviction only for a minor offence, the accused having been acquitted of more serious offence, or where the court gives a lesser sentence or where the case ends in acquittal of some of the accused before the court by any Magistrate or Sessions Judge, the Prosecutor in charge of the said case shall obtain a certified copy of the judgement and submit urgently - the judgement along with his opinion indicating the grounds for filing or not filing an appeal, to the concerned authority. Wherever a Prosecutor recommends an appeal or revision etc. against the judgement or order an appellate or revisional court, he shall invariably send the certified copies of the judgement or order of the trial court also along with the copy of the order of the appellate court.
6. Every proposal to file an appeal or revision shall be examined and decision taken by the competent authority in consultation with the senior officer of Police without any delay keeping in view of the period of limitation

Judicial Scrutiny of Administrative Actions

The main points considered

1. Whether Principles of Natural Justice are followed or not? It includes fair hearing and fair action by the authority.
2. Whether Action authority is vitiated Arbitrary approach or not?
3. Whether the action was discriminatory or not?
4. Whether under jurisdiction of the authority?
5. If fundamental rights have been violated.
6. Whether mandatory provisions have been followed or not if not then whether that caused prejudice or not?
7. Whether the law of the subject in question has been followed or not?

If the actions of the authority are able to stand for the legal scrutiny as enumerated above then they are assailable.

Public Servant handling Government Litigation

It is desirable that Government servants handling litigation should possess the following:

- a. Should have independent stance and fairness in handling litigation matters.
- b. Should have thorough knowledge of facts of the cases of litigation.
- c. Should be well versed in the provisions of law on the subject and the procedure prescribed by law.
- d. Should have adequate knowledge about hierarchy of courts and their jurisdiction and also the way of functioning.
- e. Should have reasonably good communication skills.
- f. Should know the protocols to be followed before the courts and court officers.

To Remember

1. When legal questions of importance or difficulty arise (if time permits) the Legal Remembrancer should be consulted in every stage of litigation conducted on behalf of Government.
2. Whenever any instruction is necessary in the conduct of any suit, appeal or miscellaneous proceeding, the GP shall take the order of the district officer and act upon them.
3. No civil proceeding of any kind shall be instituted or defended in the High Court unless under the order of the LR.
4. All complaints, answers and written statements should be drafted by the GP in English and should be filed in courts in English. When any document that is not in English has to be submitted to the LR, a translation should be sent in its place.
5. All civil suits and appeals to which Government is a party shall be entered in a register in the form as prescribed in the Assam Law Department Manual.

Important Law Terms

1. **Adjudication** - The legal process of deciding a dispute between two or more parties by a competent court
2. **Affidavit** - It is a sworn statement made by a party in writing in the presence of an Oath Commissioner or a Notary Public. It is used as an

evidence in court proceedings. An Affidavit in reply to a petition filed by a respondent is known as **Counter- affidavit**.

3. **Appeal** - It is a process by which the correctness of a decision of a lower court or tribunal is questioned in a higher court.
4. **Attestation** - It is an authentication of a signature by an authorized person who could be an Oath Commissioner or a Notary Public.
5. **Bench** - The composition of judges sitting to hear a matter in court.
6. **Contempt of Court** - A party willfully disobeying an order of a court can be held in contempt of that court. Court has the power to punish anyone committing contempt of a court.
7. **Caveat** - When a petition, not related to a pending appeal is expected to be filed or have been filed but has not been heard, any person claiming right to appear before the court on the hearing of such petition, may lodge a caveat in the matter. As and when any such petition is filed, the registry of the court will send a notice to him and shall require the petitioner to serve copy of the petition upon the caveator along with papers filed in support of the petition.
8. **Decree** - The formal order of a court that conclusively resolves the issue in a case and determines the rights of the parties.
9. **Ex Parte** - A hearing or trial conducted in the absence of one party.
10. **Pecuniary Jurisdiction** - It refers to the monetary value of cases that can be adjudicated by it.
11. **Pleader** - A category of legal practitioner authorized to plead in a case in a court of law. Government Pleader is a pleader retained by or acting for the Government.
12. **Proceedings** - It is a form and manner in which a court of law or judicial officer conducts business.
13. **Prosecutor** - A prosecutor is a lawyer who works for a state or government organization and is responsible for starting legal proceedings and then proving in a criminal court that the suspect committed the crime he is accused of.
14. **Stay Order** - It is an application filed seeking an interim court order to prevent the respondents from performing an action or prevent an order from being carried out.
15. **Sub judice** -A matter pending a decision by a Court is called sub judice. Partied to such a matter should not do anything that would affect the outcome of the case.
16. **Suo Moto** - The Court may take action on its own when facts require legal intervention.

17. **Vakalatnama** – It is the document by which an advocate is authorized to represent a party in court.

18. **Writ and Writ Petition** - Writ is a direction that the court issues which is to be obeyed by authority/person to whom it is issued. A petition seeking issuance of a writ is a writ petition.

Extract of section 80 of Civil Procedure Code, 1908

[(1)] 2 [Save as otherwise provided in sub-section (2), no suits 3 [shall be instituted] against the Government (including the Government of the State of Jammu and Kashmir)] or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been 4 [delivered to, or left at the office of]

(a) in the case of a suit against the Central Government, 5 [except where it relates to a railway] a Secretary to that Government;

6[(b)] in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;

7[(bb)] in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorized by that Government in this behalf;

(c) in the case of a suit against 8[any other State Government], a Secretary to that Government or the Collector of the district; 9***

10* * *

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

11[(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official

capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (I), if in such notice

the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and the cause of action and the relief claimed by the plaintiff had been substantially indicated.]



THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্তৃত্ব দ্বাৰা প্ৰকাশিত

PUBLISHED BY THE AUTHORITY

নং 562 দিশপুৰ, মঙ্গলবাৰ, 30 নবেম্বৰ, 2021, 9 আশ্বোণ, 1943 (শক)

No. 562 Dispur, Teuesday, 30th November, 2021, 9th Agrahayana, 1943 (S. E.)

GOVERNMENT OF ASSAM
ORDERS BY THE GOVERNOR
PERSONNEL(B) DEPARTMENT, DISPUR

OFFICE MEMORANDUM

The 1st November, 2021

No. ABP.92/2012/254.-

Subject: Compliance of Court orders.

The Honorable Gauhati High Court has observed that of late, the Government Officers in their own enthusiasm are taking it upon themselves to re-adjudicate the judgement of the Court and are taking decision contrary to Court's judgement.

In this regard, the Hon'ble High Court in its order dated 27.09.2021 in WP(C) No. 4870/2021 (Nezam Uddin- Vs- State of Assam and others) has observed that the petitioner's father who was a LP school teacher died in harness on 26.07.2015. At the time of death of the Government servant, the petitioner was minor and accordingly he had made his application on 27/6/2017 for compassionate appointment after attaining majority. But, his application was not placed before the District Level Committee of Karimganj district by the District Elementary Education Officer, Karimganj. The Hon'ble Gauhati High Court in the order dated 24.02.2021 passed in WP(C) No.1114/2021(Nezam Uddin-Vs- State of Assam and others) directed the District Elementary Education Officer, Karimganj to place the matter before the District Level Committee. But, the District Level Committee of Karimganj district had rejected the claim of the petitioner in its meeting dated 11/6/2021 on the ground that the petitioner submitted application after he has crossed the time limit of two years for making application from the date of death of

the Government servant as stipulated in the OM No ABP. 50/2006/Pt/182 dtd 1/6/2015. In this case, the Hon'ble High Court in the aforesaid order dated 27/9/2021 has viewed seriously that the District Level Committee had taken upon itself to re-adjudicate the matter and such conduct of the District Level Committee can be construed to be contempt of Court.

The Hon'ble High Court has further indicated that this is not an isolated case and of late it is being noticed that the Government Officers in their own enthusiasm are taking it upon themselves to re-adjudicate the judgement of the Hon'ble Court and are taking decision contrary to Court's judgement which would lead to deterioration of Constitutional order prevailing in the Country.

Hon'ble Court has further instructed – "issue appropriate notification in general to all officers of the Govt. of Assam not to indulge any acts of such nature. If the orders of the Court are later on noticed to be incorrect, appropriate remedy would be to file an appeal or to move an application of review, but under no circumstance a government officer unilaterally to take upon itself to re-adjudicate of the Court's order and take different view on one pretext or the other and act accordingly".

RUBY BORAH,

Commissioner & Secretary to the Government of Assam,
Personnel Department.

**GOVERNMENT OF ASSAM
JUDICIAL DEPARTMENT :: JUDICIAL BRANCH
DISPUR :: GUWAHATI-6**

OFFICE MEMORANDUM

No. JDJ/57/2019-ESTT. JUDI-Judicial/1

Dated Dispur the 18th September, 2019

Subject : Filing of Vakalatnamas and Affidavits before the Hon'ble Supreme Court through the Addl. Advocate General and Standing Counsel

It is seen that the departments of the State government often take considerable time to grant formal approval for filing Vakalatnamas and affidavits before the Hon'ble Supreme Court. This leads to a situation where the Resident Commissioner, Assam House, New Delhi is required to sign affidavits and Vakalatnamas on the basis of last minute verbal or telephonic instructions. With regard to Vakalatnamas, the situation requires urgent filing of the same by the Ld. Addl. Advocate General and Standing Counsels as without Vakalatnamas, they cannot enter appearance and receive copies of the paper book of the matter and without the paper book or details, they cannot seek instructions from concerned departments.

To overcome these practical difficulties and with a view to streamline the system, the Governor of Assam is pleased to prescribe the following procedures-

1. VAKALATNAMAS- The Resident Commissioner, Assam House, New Delhi is hereby instructed to sign all Vakalatnamas sent to him with a covering letter from Ld Addl. Advocate General, Assam, Supreme Court of India, and in his absence or vacancy, by the concerned Standing Counsel, for immediate filing of the same.

2. AFFIDAVITS- Normally, affidavits are to be filed after necessary approval from concerned administrative departments. However, in an urgent situation, if the department has already sent the requisite instructions to the Addl. Advocate General and Standing Counsels for preparation of affidavit, the Resident Commissioner may also sign such affidavit on the basis of letter by the Ld. Addl. Advocate General, Assam, Supreme Court, and in his absence or vacancy, by the concerned Standing Counsel, Assam, Supreme Court.

Sd/- S.K. Sharma
L.R. -cum- Commissioner & Secretary to the Govt. of Assam
Judicial Department

Memo No. JDJ/57/2019-ESTT. JUDI-Judicial/1-A

Dated Dispur the 18th September, 2019

Copy for information and necessary action to :

1. The Advocate General, Assam, Gauhati High Court, Guwahati-1.
2. Shri Nalin Kohli, Addl. Advocate General, Govt. Of Assam, Supreme Court of India, New Delhi.
3. The Addl. Chief Secretary/ Pricipal Secretary/Commissioner & Secretary to the Govt. of Assam, Department.
4., Standing Counsel, Govt. of Assam, Supreme Court of India, New Delhi
5. The Resident Commissioner, Assam House, New Delhi.
6. All Administrative Departments, Dispur, Guwahati-6.
7. The Director, Govt. Press, Bamunimaidam, Guwahati.
8. Guard File/ Library Copy.

By order etc.

Deputy L.R. & Deputy Secretary to the Govt. of Assam
Judicial Department

GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL:::PERSONNEL (B)
DISPUR:::GUWAHATI-6

No. ABP.92/2012/295

Dated Dispur, the 8th December, 2022

OFFICE MEMORANDUM

In continuation of Personnel (B) Department's earlier Office Memorandum dealing with Judgment of Hon'ble Gauhati High Court barring the Government Officers to re-adjudicate by themselves and taking decision contrary to Court's judgment issued vide ABP.92/2012/254, dated 01/11/2021, it is once again brought to the notice of Govt. of Assam that similar incidents have been taking place in some Departments of Govt. of Assam.

In the present instance in Contempt Case (C) 406/2022 of Bhuban Ch. Das Vs Rajesh Prasad, the Commissioner and Secretary to the Govt. of Assam, Irrigation Department and Oes, Hon'ble Gauhati High Court observed that in the implementation of the Judgment and order dated 27.10.2021 passed in W.P.(C) 5643/2021, the officials of different level in Irrigation and Finance Departments are taking views, a prima facie reading of which gave an impression that the Officials are taking a view which is different as well as over and above the view taken by the Court in its judgment and order which also would be a contempt of its own.

The Hon'ble High Court also observed that the directions of the High Court are not complied with in many such cases by the Officials of the Govt. at different levels which necessitates the filing of Contempt Petition and it is only after receiving the notice in a Contempt Petition that an order of compliance is passed and produced before the Court and the Court taking lenient view closes such Contempt Petition. The practice is to be deprecated and is not to be repeated.

The Hon'ble Gauhati High Court further directed that all Officials of Govt. of Assam at all levels are to ensure that the Court's order are complied with in its true earnest and if there is any legal impediment, to approach the Court once again rather than sitting over the judgment and orders of the Court for a period of time or to take a view different from the view taken by the Court in its judgment and order.

Accordingly, all Officials of all the Departments are henceforth directed:

- 1) To promptly act upon the Hon'ble Court's orders/ directions for ensuring compliance and if there is any scope for appeal/ review/ revision or some modification to approach the Court promptly without sitting over the order/ judgment passed by the Hon'ble Court.
- 2) Every department must entrust a responsible officer to keep track of the Court's case and compliance of Court orders and the Seniormost Secretary may review the status of all such matters on a fortnightly basis.
- 3) Every department may sensitise their Officers and the Staff in dealing with Court cases, more particularly in ensuring compliance or follow up action to the Court orders.
- 4) Every department may keep close coordination with the Govt. Advocate or Learned Councils of the department and also with the Judicial department and act proactively in filing proper petition/ affidavit etc. when called for and ensure compliance/ follow up of orders/directions of the Courts in a prompt manner.



Sd/-
P.K. Borahkar, IAS
Chief Secretary, Assam

Memo No. ABP.92/2012/ 295-A

Dated Dispur, the 8th December, 2022

Copy for information and necessary action to:

1. All Additional Chief Secretaries to the Government of Assam, Dispur.
2. The Principal Secretary to the Chief Minister, Assam, Dispur.
3. All Principal Secretaries/ Commissioner and Secretaries/ Commissioner & Special Secretaries/ Secretaries to the Government of Assam, Dispur.
4. The Registrar, Gauhati High Court in reference to Hon'ble Court's order dated 02.12.2022 in the Cont. Case (C) No. 406/2022.
5. Sri Dipakar Nath, Senior Govt. Advocate, Gauhati High Court, with reference to his letter No. SRGA/DN/2022/11264, dated 03.12.2022 is requested to apprise Hon'ble Gauhati High court.
6. All Commissioners of Divisions.
7. All Heads of Departments.
8. All Deputy Commissioners. They are requested to send copies of this Notification to all Blocks/ offices of the district.
9. Principal Secretaries, KAAC, Diphu/ Bodoland Territorial Council, Kokrajhar/Dima Hasao Autonomous Council, Hailong.
10. The S.O to the Chief Secretary, Assam, Dispur.
11. PS to the Ministers/ Minister of State, Assam, Dispur.
12. The Superintendent, Assam Government Press, Bamunimaidan, Ghy-21 for favour of publication of the above O.M. in the extra ordinary Assam Gazette.

By order etc.,


Addl. Secretary to the Govt. of Assam,

Personnel (B) Department


9/12/22

About the Author

Shri Deepak Sarma joined the Assam Civil Services in 1983. He was nominated to the Indian Administrative Services (IAS) in 2012. He was allotted 1999 batch in the IAS. He took voluntary retirement in 2017 to join as Member Assam Public Service Commission. He completed the term in 2019.

