

No.1(1)/2015-D(CMU)
Ministry of Defence
New Delhi

Dated 2nd February, 2016

OFFICE ORDER

Subject: Filing of Appeal/SLP in Supreme Court – Procedure regarding

In the context of the increasing number of court cases where the Government is a litigant before various courts, Ministry of Law had brought out the National Litigation Policy in 2010. The policy states that Government must cease to be a compulsive litigant. The philosophy that matters should be left to the courts for ultimate decision has to be discarded. The policy further states:

“In Service Matters, no appeal will be filed in cases where:

- a) the matter pertains to an individual grievance without any major repercussion;
- b) the matter pertains to a case of pension or retirement benefits without involving any principle and without setting any precedent or financial implications.”

2. Further at a meeting held on 08.10.2015, Hon'ble Raksha Mantri expressed concern over the fact that Appeals/SLPs are filed in the Supreme Court in a routine manner and in several cases adverse orders are passed by the Supreme Court much to the embarrassment of the Government. Hon'ble RM observed that there may be court orders which deviate from government policy or have large financial implications. In such cases filing Appeal/SLP may be inevitable. There may however be some court orders which do not have wide repercussions and may have only meager financial implications. In such cases it may be necessary to examine whether it is administratively expedient to file Appeal/SLP in the Supreme Court.

3. In the above background, the procedure for filing Appeal/SLP in the Supreme Court has been reviewed and it has been decided that the following procedure will be followed while filing Appeal/SLP in the Supreme Court:

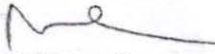
- a. The Service Hqrs/Directorates will send the proposal for filing or otherwise of Appeal/SLP in the Supreme Court to the concerned Joint Secretary after due examination in light of relevant rules and policy. The advice of the Central Government Standing Counsel (CGSC) handling the case on the suitability of filing appeal or otherwise should also be obtained and forwarded along with the proposal. This should be done expeditiously as it has been seen that many of the SLPs/Appeals have been dismissed by the Hon'ble Supreme Court on account of delay in filing.
- b. The JS concerned shall examine the proposal taking into account the advice of the CGSC handling the case and previous cases of similar nature, if any, which are subjudice or have been already decided by the Supreme Court on merits. Where the decision of the Court involves policy issues or have wider repercussions, the JS shall take the advice of the nodal Ministries/Departments namely DOP&T, MOF, etc. concerned with the subject.
- c. On a comprehensive examination of the case as above, if the JS arrives at a decision that it is a fit case for filing Appeal/SLP in the Supreme Court, he will refer the file to LA(Def) for his advice/views. Otherwise, he will return the file to the Service Hqrs/Directorate for implementing the court order with the concurrence of the Defence Finance, if required.
- d. On receipt of the proposal for filing Appeal/SLP, LA(Def) will, after due examination of the case, return the file with his views/advice to the JS.
- e. If LA(Def) agrees with the proposal for filing Appeal/SLP, the JS will assess the importance of the case and decide whether it needs to be shown to AS/Defence Secretary or RM. Thereafter, the file will be

returned to LA(Def) for onward transmission to Central Agency Section for filing Appeal/SLP in the Supreme Court. But it has to be kept in mind that in the process, the limitation for filing Appeal/SLP does not get expired. In case, such period has already expired, then reason for the delay has to be shown date-wise for filing an application for getting the delay condoned.

- f. If, however, LA(Def) does not agree with the proposal for filing Appeal/SLP and the JS also, in view of the advice of LA(Def), decides that there is no need to file Appeal/SLP, the file will be sent back to Service Hqrs/Directorate for implementing the order.
- g. If, in spite of the advice of LA(Def) not to file Appeal/SLP, JS decides that there is still justification for filing Appeal/SLP, he will take the approval of Additional Secretary (AS) and send the file to MOL/CAS through LA(def).

4. Approval of Raksha Mantri shall be taken in all sensitive cases or where wider interests of Public Policy are involved. A decision whether a case will be shown to the Minister will be taken at the level of Joint Secretary.

5. This order is issued in supersession of the earlier order No. 1-34(4)/88-O&M dated 2nd June, 1988.


(R.Pandiyan)
Deputy Secretary (E+MIS)
Tel: 23013416

All Officers and Sections in the Ministry of Defence