

Policy Guidelines on Arbitration and Adjudicators

Policy guidelines regarding level of arbitrators and fee structure to be paid to Arbitrators and Adjudicators was issued vide this office note no. MRVC/W/EL/Technical Cir./30/Vol. III Dt. 22.04.2015. In view of The Arbitration and Conciliation (Amendment) Act, 2015 and considering new developments, following policy guidelines are issued on Arbitration and Adjudicators.

1. Demand for Arbitration:

- 1.1 In the event of any contractual dispute or difference between the parties, the demand for arbitration shall be made by either party as per terms and conditions for arbitration mentioned in tender document. Either party shall first give a Notice of Dissatisfaction and intention to commence arbitration before proceeding for the arbitration. After 90 days but within 150 days from the day on which the Notice of Dissatisfaction and intention to commence arbitration was given, either party shall be entitled to demand in writing that the dispute or difference be referred to arbitration.
- 1.2 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 item-wise. Only such dispute or difference, in respect of which demand has been made, together with counter claims or set off, given by the either party, shall be referred to arbitration. Other matters shall not be included in the reference.
- 1.3 The parties may waive off the applicability of sub-section 12(5) of Arbitration and Conciliation (Amendment) Act 2015 for appointment of the arbitrators, if agree for such waiver, in writing, after dispute having arisen between them, in the format given in Annexure 'A'. Hence this filled format should be submitted by the party along with the Demand for Arbitration.
- 1.4 The entire expenditure for arbitration (fees, travel and stay expenses, incidental charges, taxes etc. for the Arbitral Tribunal) shall be shared equally by MRVC and the Contractor provided parties sign an agreement under Section 31-A(5) of Arbitration and Conciliation (Amendment) Act, in the format available in Annexure 'A', while submitting the Demand for Arbitration.

2. Appointment of Arbitrators:

The level of arbitration is decided on the basis of total value of all the claims and will be as under:

2.1. Appointment of Arbitrator where applicability of section 12(5) of Arbitration and Conciliation (Amendment) Act has been waived off.

- i. In cases where the total value of all claims in question added together does not exceed **Rs.2,00,00,000/- (Rs. Two Crore Only)**, the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below JA Grade or Railway PSU Officer of equivalent Grade (E-6 and above)..
- ii. In the cases not covered by para 2.1(i) above, the Arbitral Tribunal shall consist of a Panel of three Gazetted Railway Officers not below JA Grade or Railway PSU Officers of equivalent Grade (E-6 and above).

OR

Two Gazetted Railway Officers not below JA Grade or Railway PSU Officers of equivalent Grade (E-6 and above) and a Retired Railway / Railway PSU Officer, retired not below the rank of SAG Officer (E-8 for PSU) as the Arbitrators. It will be necessary to ensure that one of them is from the Accounts Department.

2.2. Appointment of Arbitrator where applicability of section 12(5) of Arbitration and Conciliation (Amendment) Act has not been waived off.

The Arbitral Tribunal shall consist of a Panel of three (3) Retired Railway / Railway PSU Officers, retired not below the rank of SAG Officer as the Arbitrators.

2.3 In case of three member Arbitral Tribunal vide para 2.1(ii) and 2.2 above, MRVC will send a panel of at least 4 names to work as Arbitrators to the contractor within 60 days from the days when written and valid Demand for Arbitration is received by the either party. Contractor will suggest 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of despatch of request by MRVC. The CMD shall appoint at least one out of them as contractor's nominee and simultaneously appoint the balance indicating the presiding arbitrator also.

2.4 If one or more arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or vacate his/her office/offices or is/are unable or unwilling to perform his functions as arbitrator for any reason whatsoever or dies or in the opinion of the CMD/MRVC fails to act without undue delay, the CMD shall appoint new arbitrator/arbitrators to act in his/their place in the same manner in which earlier arbitrator/arbitrators had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator(s).

2.5 Competent authority for appointment/replacement of Arbitrator or members of The Arbitral Tribunal shall be CMD/MRVC. Place of arbitration shall normally be Mumbai.

3. Qualification of Arbitrators:

- i. Serving Gazetted Railway Officers not below JA Grade level or Railway PSU Officers of equivalent Grade (E-6 and above).
- ii. Retired Railway or Railway PSU Officers including MRVC Officers not below SA Grade (E-8 for PSU) level shall be eligible to be placed on the approved panel of MRVC only after completion of one year from the date of their retirement.
- iii. Age of arbitrator at the time of appointment shall be below 70 years.
- iv. An arbitrator may be appointed notwithstanding the total number of arbitration cases in which he has been appointed in the past. Preferably he should not have more than seven ongoing arbitration cases with him.
- v. While appointing arbitrator(s), due care shall be taken that he/they is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/ their duties as Railway Servant(s) expressed views on all or any of the matters under dispute or differences. The person under consideration for appointment as an arbitrator shall disclose in writing any circumstances as per Annexure 'B'. The proceedings of the Arbitral Tribunal or the award made by such Tribunal will, however, not be invalid merely for the reason that one or more arbitrator had, in the course of his service, opportunity to deal with the

matters to which the contract relates or who in the course of his/their duties expressed views on all or any of the matters under the dispute.

4. Panel of Retired Railway/PSU Officers as Arbitrator/Adjudicator:

The following procedure will be adopted for making a panel of retired Railway/ Railway PSU Officers for working as Arbitrator/Adjudicator:

- i. The officers who are approved on the panel of Western Railway & Central Railway will be automatically considered for inclusion on the MRVC panel. No fresh vigilance clearance is required.
- ii. Any request received directly by MRVC for inclusion in the Arbitrator/ Adjudicator Panel of MRVC will be evaluated by the screening committee nominated by CMD and will be put to CMD for approval. However, before putting up the recommendation of screening committee to CMD for approval, Vigilance clearance is to be obtained for these officers by CVO/MRVC, who shall directly communicate with the Vigilance Directorate of Railway Board for obtaining the requisite clearance.
- iii. MRVC will ask for the willingness from the officer to work as arbitrator in a case as per enclosed format in Annexure 'B'. While asking for willingness, brief detail of the dispute shall be given.

5. Fee structure for Arbitrators:

- i. Fees for retired Railway / Railway PSU Officers, Rs.1,50,000/- per case for each Arbitrator.
- ii. Fees for serving MRVC and Railway Officer in JAG and above or Railway PSU Officer of equivalent Grade, Rs.60,000/- per case for each arbitrator.
- iii. Incidental/miscellaneous charges is payable subject to a maximum of Rs.10,000/- per case. This includes stamp paper, stenographic assistance, stationery, postage, phone calls and other incidental costs incurred during the meeting.
- iv. Travel cost & Hotel Accommodation:

For serving officers of Railway / Railway PSU: as per their eligibility grade.

For Retired Railway/Railway PSU officers; by class of travel/mode of journey as admissible in Railway / Railway PSU for grade of officer in which he/she has retired will be allowed.

In case of Air Travel, the entitlement will be Economy class and AC Car by road. Suitable Hotel Accommodation will be arranged by MRVC for Arbitrator/Adjudicator residing beyond Mumbai Municipal /Metropolitan / Suburban Region.

- v. The entire expenditure for arbitration (fees, travel and stay expenses, incidental charges, taxes etc. for the Arbitral Tribunal) shall be shared equally by MRVC and the Contractor. An agreement under Section 31-A(5) of Arbitration and Conciliation (Amendment) Act shall be signed by party as per the format available in annexure while submitting demand for arbitration as per clause 1.4 above.
- vi. The above fees are irrespective of the amount of claim. GST will be paid extra as applicable.
- vii. The SAG officers of the department whose case is being decided will be the sanctioning authority for items (i) to (iv) above.

viii. Sole Arbitrator shall be entitled for 25% extra fee over the fee prescribed in para 5(i) & 5(ii) above.

ix. Arbitration tribunal (Sole or Panel of Arbitrators) shall be entitled to 50% extra fee (over the fee prescribed in para 5(i), 5(ii) and 5(viii) above), if award is decided within six months of the appointment of the tribunal.

6. Qualification and Fee structure for Adjudicator:

i. He shall be retired Railway/Railway PSU officer retired as SAG and above (E-8 and above for PSU) and on the panel of MRVC as per para 4 above.

ii. Fees to be paid to the adjudicator shall be Rs 1 lakh. Other clauses related to charges and facilities like travel cost, hotel accommodation, incidental charges, GST clause and sanctioning authority etc. mentioned above vide para 5(iii), (iv), (vi) and (vii) shall also be applicable to Adjudicators.

iii. The entire expenditure incurred shall be shared equally by both the parties.

7. Applicability of these Policy guidelines:

7.1 These arbitration policy guidelines are applicable to all works and service contract except funded by multilateral agencies. However, these guidelines will supplement the arbitration clause in contracts funded by multilateral agencies and also for purchase of goods as per IRS Conditions of Contracts.

7.2 Wherever this policy contravenes any condition of the contract, the existing conditions of the Contract shall apply

7.3 These policy guidelines shall be uploaded and available on MRVC public website www.mrvc.indianrailways.gov.in

7.4 The applicability of these policy guidelines should be spelt out clearly in the bidding document. Tender conditions may also be modified to the extent required, specially clause 1 regarding Demand for Arbitration and enclosed formats related to waivers under clause 1.3 and 1.4 above should be included in tender conditions. .

ED/Electrical

5/11/18

All concerned

Encl. Annexure-A (Format under clause 1.3 and 1.4)
Annexure B (Format under clause 3(v))

Annexure 'A'

Towards Waiver Under Section 12(5) and Section 31-A(5) of Arbitration and Conciliation (Amendment) Act

I/We (Name of Agency/Contractor) with reference to Agreement No.....raise disputes as to the construction and operation of this contract, or the respective rights and liabilities, withholding of Certificate and demand arbitration in respect of following claims:

Brief of Claim:

- (i) Claim 1 – Detailed at Annexure-
- (ii) Claim 2.
- (iii) Claim 3.

I/We (Post of Engineer) with reference to Agreement No. hereby raise disputes as to the construction and operation of this contract, or the respective rights and liabilities, withholding of certificate and demand arbitration in respect of following claims:

I/We..... do/do not agree to waive off applicability of Section 12(5) of Arbitration and Conciliation (Amendment) Act.

Signature of Claimant _____ Signature of Respondent _____

Agreement Under Section 31-A(5)

I/We (Name of Claimant) with reference to Agreement No. hereby waive off the applicability of Sub Section 31-A(2) to 31-A(4) of the Arbitration and Conciliation (Amendment) Act. We further agree that the cost of arbitration will be shared equally by the parties as per clause 1.4 and 5 (v) of the Arbitration Policy of MRVC.

Signature of Claimant _____ Signature of Respondent _____

*Strike out whichever not applicable.

Willingness/Certification by Arbitrators being appointed by MRVC

1. Name:.....
2. Contact Details:.....
3. Prior experience (Including Experience with Arbitration):.....
4. Number of on-going Arbitration cases with me:.....
5. I hereby certify that I have retired from Railways/Railway PSU w.e.f. _____ and empanelled as Railway/MRVC Arbitrator as per "The Arbitration and Conciliation Act - 1996".
6. I have no any past or present relationship in relation to the subject matter in dispute, whether financial, business, professional or other kind.
 OR
 I have past or present relationship in relation to the subject matter in dispute, whether financial, business, professional or other kind. The list of such interests is as under;
7. I have no any past or present relationship with or interest in any of the parties whether financial, business, professional or other kind, which is likely to give to justifiable doubts as to my independence or impartially in terms of The Arbitration and Conciliation Act - 1996.
 OR
 I have past or present relationship with or interest in any of the parties whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartially in terms of The Arbitration and Conciliation Act - 1996. The details of such relationship or interests are as under;
8. There are no concurrent Circumstances which are likely to affect my ability to devote sufficient time to the arbitration and in particular to finish the entire arbitration within twelve months.
 OR
 There are Circumstances which are likely to affect my ability to devote sufficient time to the arbitration and in particular to finish the entire arbitration within twelve months. The list of such circumstances is as under;

Date

Signature