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LAW DEPARTMENT

NOTIFICATION

The 11th September 2012

S.R.O. No. 512/2012—In exercise of the powers conferred by Section 312 of the Code of Criminal Procedure, 1973 (2 of 1974) and in supersession of the Odisha Criminal Court Witness (Payment of Expenses) Rules, 1963 and orders made on the subject if any, the State Government do hereby make the following rules for regulating payment by the State Government of reasonable expenses of witnesses attending any Criminal Court in the State for the purposes of any enquiry, trial or other proceeding under the said Code, namely :—

1. (1) These rules may be called the Odisha Criminal Court Witnesses (Payment of Expenses) Rules, 2012.

(2) They shall come into force on the date of their publication in the *Odisha Gazette*

2. (1) In these rules unless the context otherwise requires—

(a) "Code" shall mean the Code of Criminal Procedure, 1973 ;

(b) "Section" means a section of the Code ;

(c) "Witness" includes complainant and persons as escorts of witness, who is a child, girl or invalid person, to the satisfaction of the Court ;

(2) All other words and expressions used but not herein defined shall have respectively the meanings assigned to them in the Code.

3. (1) The Criminal Courts are authorised to pay at the rates specified in the Schedule to these rules the expenses of—

(a) witnesses, whether for the prosecution or for the defence,—

(i) in cases in which the prosecution is instituted, or carried on by, or under the orders of or with the sanction of the Government, or any Judge, Magistrate, or other public officer, or in which it shall appear to the Presiding Officer to be directly in furtherance of the interest of public service; and

(ii) in all cases entered as not bailable in Column 5 of Schedule II appended to the Code.

- (b) witnesses in all cases in which they are summoned under the provisions of Section 311 of the Code unless otherwise directed.

(2) The Court may refuse payment of such expense to any witness, who without sufficient cause remains absent on any day fixed for hearing and whose presence has been secured through coercive process.

4. If a witness is summoned at the instance of the complainant or accused under Section 254, his expenses shall not be withheld from him except on the ground of failure to do his duty as a witness when summoned.

5. (1) For the purpose of computing the expenses which the Criminal Courts are authorised to pay, witnesses shall be divided into three classes, namely :—

Class "A"—General witnesses ;

Class "B"—Retired Government servant witnesses (like doctors, engineers, etc.) appearing in connection with their duty discharged or matters connected while in public service.

And such expenses shall ordinarily be a day's allowance which may be paid to persons coming under Class "B" on demand by them and, to persons of other class as a general rule.

(2) (i) The rates fixed in the Schedule to these rules are maximum, and are intended to reasonably meet the cost of any day's meal. In every case, therefore, the Court should consider the circumstances of the individual and the local conditions, and grant of reduced allowance in circumstances and the localities where the actual cost of one day's meals fall short of the maximum rate admissible.

(ii) In the case of witnesses of Class "A" for the payment of travelling allowance, the fare should be paid at the lowest rate.

For every date of appearance in the Court a witness shall be paid, diet allowance at the rate specified in the Schedule. In addition, a witness shall be entitled to diet allowance at the rate admissible to him for the days covered by journey from his ordinary place of residence to and from the Court if such journey exceeds 100 kms. both ways. But if such journey is performed wholly or in part on the date of appearance in the Court diet allowance for one day shall be admissible. Where there are alternative routes, the fare shall be calculated by the shortest route.

(iii) In addition to above charges travelling allowance at ferries will be allowed at the authorised rates to the extent to which they may have been actually incurred.

6. Notwithstanding anything in the preceding rules—

(i) Government servants or employees of the Railways when, summoned to give evidence in their public capacity shall receive nothing from the Court. In such case, they shall be paid travelling allowance at their own rates by the employing Government or the Railways, as the case may be, on production of a certificate of attendance granted by the Court. Any sum which may be deposited in the Court for travelling and diet allowance of such witnesses shall be deposited by the Court in the Treasury to the credit of the Government or the Railway as the case may be.

(ii) Government servants other than those who are subject to the Payment of Wages Act, 1936 (IV of 1936), when summoned to give evidence in their private capacity may be paid by the Court the expenses admissible to persons of corresponding rank under these rules. In order to avoid any difficulty in the matter of payment of travelling allowance and dearness allowance to these witnesses, they may be taken into 'A' Class witness.

Similarly for non-Government Institutions like local bodies, Zilla Parishads and Life Insurance Corporation, etc., in their official capacity by their employees when summoned by the Criminal Courts may be paid their travelling allowance, etc., in accordance with the scale indicated for Government and Railway employees.

If the Court pays them any sum as diet allowance apart from payment of travelling expenses, they shall credit that sum to Government or the Railway concerned.

- (iii) Government and Railway employees who are subject to the Payment of Wages Act, 1936 (IV of 1936), when summoned to give evidence in their private capacity may be paid by the Court any travelling allowance admissible to persons of Class 'A' under these rules but no diet allowance.

Any sum which may be deposited in the Court for the diet allowance of such witnesses shall be deposited by the Court in the Treasury to the credit of Government or the Railway, as the case may be.

- (iv) Witnesses following professions such as medicine, law and giving expert evidence shall be given special allowance according to circumstances.

7. (1) On appearance of the witness being summoned by the Court, and after discharging his duty as directed, it shall be the duty of the Nazir or such other authorised ministerial officer, to pay the Bata money on the same day to such witness in presence of the Presiding Officer, on whose summons the witness appeared in his/her Court.

(2) It shall be the responsibility of the Registrar of the Civil Courts or the Judge in charge of the Nizarat/Accounts to take adequate steps to get the Bata bill encashed sufficiently ahead before the issue of summons to the witness in order to pay the Bata money to the witness on the same day of his/her appearance in the Court :

Provided that in case the Bata money is not paid to the witness on the same day of his appearance in the Court due to any reason, the Nazir or the authorised ministerial officer shall report the same to the concerned Presiding Officer on whose summons, the witness attended the Court and shall also intimate the date of deferred payment of such Bata money to the witness with intimation to the concern Presiding Officer. It shall be the duty of such Presiding Officer and Judge-in-charge (Accounts) of the station to ensure that such witness has been paid the Bata money without inordinate delay.

SCHEDULE

Travelling Allowances

Class of witness	Maximum diet allowance per diem	By road or boat	By rail or steamer	For coming on foot where no conveyance is available	REMARKS
1	2	3	4	5	6
(a) General Witnesses.	Rs. 100.00	Actual conveyance charges of Bus, Rickshaw, Bullock-Cart or Boat.	Second class fare with conveyance charges from station to Court.	(i) Up to 5 kms.–Nil (ii) 5 to 10 kms.–Half of the rate of minimum wages fixed for unskilled employees as fixed and notified by Government in Labour & Employment Department from time to time.	

1	2	3	4	5	6
				(iii) More than 10 kms.—At the rate of minimum wages for unskilled employees as fixed and notified by Government in Labour & Employment Department from time to time. Every block of 5 kms. above 10 kms.—Half of the rate of minimum wages for unskilled employees as fixed and notified by Government in Labour & Employment Department from time to time.	
(b) Retired Government servant (like Doctors, Engineers, etc.) and also retired servants of non-Govt. Institutions like local bodies, Zilla Parishads and Life Insurance Corporation, etc. appearing as witnesses in connection with their duty discharged or matters connected while in public service.	Rs. 100.00	As per entitlement that he/she would have been entitled had he/she been in Government service.	As per entitlement that he/she would have been entitled had he/she been in Government service.	(i) Up to 5 kms.—Nil (ii) 5 to 10 kms.—Half of the rate of minimum wages fixed by Government for unskilled employees as notified by Government in Labour & Employment Department from time to time. (iii) More than 10 kms.—At the rate of minimum wages fixed by Government for unskilled employees as notified by Government in Labour & Employment Department from time to time. Every block of 5 kms. above 10 kms. — Half of the rate of minimum wages for unskilled employees notified by Government in Labour & Employment Department from time to time.	

[No. 10042—MJ-18/2012-L.]

By order of the Governor

D. RAUT

Principal Secretary to Government