



EAST COAST RAILWAY

मुख्य कार्मिक अधिकारी का कार्यालय/

Office of the Pr.Chief Personnel Officer

द्वितीय तल, - 751 017

Rail Sadan, IInd Floor, Bhubaneswar-751 017

स्थापना क्रमांक/ Estt. Srl. No. 07/2018

पूतरे/कार्मिक/आर/ECOR/Pers/R/Allowance.

Date: 02.02.2018

सेवा मे,

सभी प्रमुख विभागाध्यक्षों/समन्वयक विभागाध्यक्षों, पू त रे/भुवनेश्वर

मं.रे.प्र/व.मं.का.अधिकारी/मं.का.अधिकारी-खोरधारोड,वालातेरू, संबलपुर,

मु:कारखाना प्रबंधक/कारखाना कार्मिक अधिकारी- मंचेश्वर, अतिरिक्त रजिस्ट्रार/रेल दावा अधिकरण,

व.का अधिकारी(नि)/भुवनेश्वर

महा सचिव/इकोर श्र. कां., महा सचिव/इकोर श्र. यू.,

महा सचिव/एआई ओ बी सी आर ई ए, महा सचिव/ ए आई एस सी एस टी आर ई ए

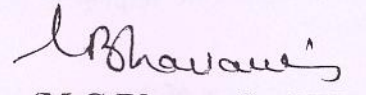
विषय /Sub: Court Cases relating to demand of Loco Inspectors for reckoning of pay element of 55 % at the time of retirement.

पूतरे के विषय क्रमांक/ECOR's Subject Serial No. ALC-02/2018

उपर्युक्त विषय पर बोर्ड पत्र सं E(P&A)II-2009/RS-18 दिनांक 04.12.2017 की प्रतिलिपि सूचना, मार्गदर्शन एवं आवश्यक कार्रवाई हेतु अग्रेषित है।

A copy of the Board's No. E(P&A)II-2009/RS-18 dated- 04.12.2017 on the above quoted subject is forwarded herewith for information, guidance and necessary action.

Encl: As above,


(M.G.Bhawani)

Dy.Chief Personnel Officer(IR&W)
For Pr. Chief Personnel Officer

प्रतिलिपि प्रेषित/Copy to :

- 1) महाप्रबंधक के सचिव/पूर्व तट रेलवे, भुवनेश्वर
- 2) मुकाधि/मुकाधि(प्रशा.), उप म.प्र, अध्यक्ष(रेलवे भर्ती प्रकोष्ठ)
- 3) उप मुख्य प्रबंधक(सू.प्रौ), उप मुकाधि(औ.सं.एवं कल्याण), वकाधि(इंजी.)
- 4) वकाधि(मुख्या.), वकाधि(स्टाफ), वकाधि(राज. एवं न्याया.)
- 5) मुकाधि के निजी सचिव/सहा.कार्मिक अधि.(मुख्या.-1),सहा.कार्मिक अधि.(कल्याण), सहा.कार्मिक अधि.(बिल), सहा.कार्मिक अधि.(भर्ती)

भारत सरकार GOVERNMENT OF INDIA
रेल मंत्रालय MINISTRY OF RAILWAYS
(रेलवे बोर्ड RAILWAY BOARD)

No.E(P&A)II-2009/RS-18

New Delhi, dated 04.12.2017.

The General Managers,
All Indian Railways (Except NCR).

Sub : Court Cases relating to demand of Loco Inspectors for reckoning of pay element of 55% at the time of retirement.

Kindly refer to this office letter No. E(P&A)II/2008/RS-32/Vol.III . dated 22-03-2016 and E(P&A)II/2016/RS-18 dated 22-07-2016 on the above subject whereby it was informed that 'Stay' has been obtained in Civil Appeal No.3110/2016, UOI Vs. Sh. Kishan Lal Sharma and Civil Appeal No. 4386/2016 UOI Vs. K. L. Mehndiratta against the verdict dated 09-10-2015 of Hon'ble High Court of Delhi in the Hon'ble Supreme Court of India.

It is understood that several court cases have been filed before various Hon'ble Tribunals and High Court on the subject. WP No. 60133 of 2006 before the Hon'ble High Court, Allahabad filed by UOI & Ors. Vs. A. Amrol, Retd. Loco Inspector has been decided in favour of UOI on 17-08-2017. In this connection, it is stated that the Hon'ble High Court, Allahabad has given the following order:-

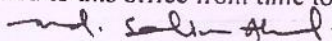
“(9)It is undisputed that the respondents had been promoted as stationary staff from the running staff.

(10)In the background of the aforesaid judgment UOI Vs. B. Baneerjee, no running staff including the erstwhile members of the running staff permanently engaged in the performance of stationary duty can be given running allowances. Running allowances are to be paid to the running staff only for performing actual running duty.

(11)The protection to the respondents of 30% of the basic pay as per the judgment of the Apex Court has also been extended as urged by Sh. Mathur, learned counsel for the petitioners.

(12)Consequently, in view of the aforesaid judgment , we allow the writ petition and set aside the impugned order dated 16-05-2006 to the extent indicated above.”

In view of the above, it is advised that if any similar issue is pending before any Court of Law on your Railways, the above position may be brought to the notice of the Hon'ble Courts. A copy of the said order is enclosed. It is requested to take adequate care to defend and assign similar case, if any, to a Senior officer for proper monitoring and follow up. The status of such cases may be informed to this office from time to time.



(Salim Md. Ahmed)
Deputy Director, Estt.(P&A)-II,
Railway Board.

Copy to: FA&CAO of all Zonal Railways.

Court No. - 37

Case :- WRIT - A No. - 60133 of 2006

Petitioner :- Union Of India And Others

Respondent :- Amrol And Others*

Counsel for Petitioner :- P.K. Mishra, Prashant Mathur, Tarun Verma, V.K. Goel

Counsel for Respondent :- Bashist Tiwari

Hon'ble Amreshwar Pratap Sahi, J.

Hon'ble Rajiv Lochan Mehrotra, J.

In Re:- Civil Misc. Delay Condonation Application No. 69517 of 2009.

Civil Misc. Substitution Application No. 69519 of 2009

The aforesaid Delay Condonation and Substitution Application have been filed on behalf of the petitioners for substituting the heirs of the D.N.Bhatia, respondent no.2, who had died.

Notice was issued on 18.5.2009. Office note indicates that neither the registered envelope nor the acknowledgment Due has been returned after service. In the aforesaid background, service is deemed to be sufficient.

We find from the affidavit filed in support of the Delay Condonation Application that sufficient cause has been shown for condoning the delay in filing of the Substitution Application. Since there is no objection, and despite notice having been served, no objection has been raised the same is allowed. Necessary Corrections, be carried out within three days.

Order Date :- 17.8.2017

aks

Court No. - 37

Case :- WRIT - A No. - 60133 of 2006

Petitioner :- Union Of India And Others

Respondent :- Amrol And Others

Counsel for Petitioner :- P.K. Mishra, Prashant Mathur, Tarun Verma, V.K. Goel

Counsel for Respondent :- Bashist Tiwari

Hon'ble Amreshwar Pratap Sahi, J.

Hon'ble Rajiv Lochan Mehrotra, J.

In Re:- Civil Misc. Delay Condonation Application No. 69524 of 2009.

Civil Misc. Substitution Application No. 69527 of 2009

The aforesaid Delay Condonation and Substitution Application have been filed on behalf of the petitioners applicants for substituting the heirs of the R.C. Bodhraj, respondent no5, who had died.

Notice was issued on 18.5.2009. Office note indicates that neither Registered Envelop nor Acknowledgment Due has been returned back after service.

In the aforesaid background, service is deemed to be sufficient.

We find from the affidavit filed in support of the Delay Condonation Application that sufficient cause has been shown for condoning the delay in filing the aforesaid Substitution Application. Since there is no objection and despite notice having being served, no one has raised any dispute, the same is allowed. Necessary corrections be carried out within three days.

Order Date :- 17.8.2017

aks

Court No. - 37

Case :- WRIT - A No. - 60133 of 2006

Petitioner :- Union Of India And Others

Respondent :- Amrol And Others

Counsel for Petitioner :- P.K. Mishra, Prashant Mathur, Tarun Verma, V.K. Goel

Counsel for Respondent :- Bashist Tiwari

Hon'ble Amreshwar Pratap Sahi, J.

Hon'ble Rajiv Lochan Mehrotra, J.

In Re:- Civil Misc. Substitution Application No. 68637 of 2009.

This application has been filed by the petitioners-applicants bringing on record the fact that C.L. Mudgil, respondent no. 10, had already died during the pendency of the Original application on 7.11.2003 but no substitution had taken place.

Accordingly, it is prayed that the judgment of the Tribunal be treated to be final as Original Application had already stood abated as against respondent no.10.

Consequently, in view of the aforesaid unrebutted facts this application is disposed of.

Order Date :- 17.8.2017

aks

Court No. - 37

Case :- WRIT - A No. - 60133 of 2006

Petitioner :- Union Of India And Others

Respondent :- Amrol And Others

Counsel for Petitioner :- P.K. Mishra, Prashant Mathur, Tarun Verma, V.K. Goel

Counsel for Respondent :- Bashist Tiwari

Hon'ble Amreshwar Pratap Sahi, J.

Hon'ble Rajiv Lochan Mehrotra, J.

- (1) Supplementary affidavit filed today is taken on record.
- (2) This writ petition questions the correctness of the judgment dated 16.5.2006 passed by the Central Administrative Tribunal whereby a challenge was raised by the respondents claiming addition of running allowance 55% of the basic pay to be added for calculation of pensionary benefits of the employee.
- (3) The Central Administrative Tribunal relying on certain judgements of this Court, Full Bench Decision of the Jabalpur High Court and the Supreme Court to support the addition of 55% of the basic pay that can be given to the running staff prior to the promotion on the stationary duty as claimed by the respondents, has allowed the Original Application.
- (4) Union of India and the Railway authorities have questioned the correctness of the said judgement. The matter appears to have been heard on previous occasions but could not be disposed of.
- (5) During the pendency of the writ petition, counter affidavit was filed by the respondents to which a rejoinder affidavit has also been filed by Sri Prashant Mathur, learned counsel for the petitioners.
- (6) Learned counsel for the petitioners contends that the final judgment of the Supreme Court in Civil Appeal No. 7298 of 2013, **Union of India and others Vs. B. Baneerjee** decided on 18.3.2016 squarely covers the issue involved in the present case and the Supreme Court reversed the judgement of the Calcutta High Court holding that running

allowance was admissible only to the running staffs and not to those who had been promoted from running staff to perform stationary duties. Learned counsel for the petitioners submits that in view of the aforesaid, the impugned judgment deserves to be reversed.

(7) Learned counsel for the petitioners informs the Court that written information has been given to Sri Bashist Tiwari, learned counsel for the respondents for the case being taken up today. Copy of the written information has been produced before the Court by the learned counsel for the petitioners that shall be placed on record. Shri Tiwari has not appeared in spite of written notice.

(8) In the background aforesaid, we find that issue of addition of 55% of the basic pay of the running staff to be added and calculated as pensionary benefits has been decided by the Supreme Court in the case of Union of India and others Vs. B. Baneerjee (Supra). It has been categorically held as under :-

"9. From the provisions of the Running Allowance Rules, extracted above, it is abundantly clear that only a specific category of employees in the Railways like Drivers, Motormen, Firemen, Guards, Assistant Guards etc. who constitute the running staff and such staff who are directly connected with the movement of trains perform running duties. Running Allowance under the Rules is required to be paid only to the running staff who are engaged in the performance of duties directly connected with the movement of trains and such allowance includes kilometerage allowance or allowance in lieu of kilometerage (ALK). While kilometerage allowance is to be paid for performance of actual running duties, the allowance in lieu of kilometerage (ALK) is to be paid to such members of the running staff who are temporarily required to perform stationary duties. The rules also make it clear that 30% of the basic pay of the running staff is required to be treated as representing the pay element in the Running Allowance. Those members of the running staff who are employed on non-running duties are paid the aforesaid 30% of the basic pay if such non-running duties are performed at the headquarters whereas in case such non-running duties are performed by the running staff at outstations they are required to be paid ALK at the rates prescribed by Rule 907(b). It is thus clear that no Running Allowance i.e. either kilometerage allowance or allowance in lieu of kilometerage is contemplated for any staff, including erstwhile members of the running staff, permanently engaged in performance of stationary duties. Running Allowance of either description is

required to be paid only to members of the running staff who are directly engaged in actual movement of trains or such staff who are temporarily assigned stationary duties but who are likely to go back and perform running duties. The respondent does not fall in either of the above two categories.

10. The retention of decategorised Drivers working as Crew Controllers in the original cadre of Drivers by the Railway Board's Circular No.9/98 dated 09.01.1998 and their entitlement to Running Allowance (ALK) has to be understood in the above context. The aforesaid inclusion, which is wholly fictional, cannot confer any benefit contrary to the express provision of the Running Allowance Rules inasmuch as a decategorised Driver working as a Crew Controller is not a member of the running staff or engaged in performance of running duties as defined by the provisions of Running Allowance Rules. The above position has been made abundantly clear by the Railway Board Circular No.12/2004 dated 14.01.2004, details of which have already been noticed.

11. There is yet another aspect of the matter which would require a mention. Under Rule 903 of the Running Allowance Rules, as noticed above, 30% of the basic pay of the running staff represents the pay element in the Running Allowance. Therefore, in case of medically decategorised Driver, like the respondent, the said component being a part of the pay drawn by him as a running staff has to be protected. The same apparently has been done as is evident from the rejoinder affidavit of the Union. The above act of the appellants also ensures compliance with the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which entitles the respondent to receive the pay and service benefits earlier drawn by him. The Running Allowance to which the respondent was entitled while he was a member of the running staff has been protected as a part of his pay in the post of Crew Controller. In such circumstances, any further grant of ALK will not be justified."

(9) It is undisputed that the respondents had been promoted as stationary staff from the running staff.

(10) In the background of the aforesaid judgment, no running staff including the

erstwhile members of the running staff permanently engaged in the performance of stationary duty can be given running allowances. Running allowances are to be paid to the running staff only for performing actual running duty.

(11) The protection to the respondents of 30% of the basic pay as per the judgment of the Apex Court has also been extended as urged by Shri Mathur, learned counsel for the petitioners. ✓

(11) Consequently, in view of the aforesaid judgment, we allow the writ petition and set aside the impugned order dated 16.5.2006 to the extent indicated above.

Order Date :- 17.8.2017

aks