



कार्यालय महाप्रबन्धक (कार्मिक), पूर्वोत्तर रेलवे/गोरखपुर -273012
Office of the General Manager (P), N. E. Railway Gorakhpur-273012

क्रमांक- 31

आर.बी.ई. सं०- निल

File No. NER-HQ0PER5(POLI)/67/2021-O/o SPO/RP/HQ/NER (Comp No.55957)

दिनांक 08.03.24

सभी विभागाध्यक्ष
सभी मण्डल रेल प्रबन्धक
सभी कार्मिक अधिकारी
सभी मुख्य कारखाना प्रबन्धक
सभी अतिरिक्त मण्डलाधिकारी/स्थापना
पूर्वोत्तर रेलवे।

विषय:- **Contesting of Court Cases filed by CLIs claiming 55% add-on pay element for computation of retirement benefits.**

रेलवे बोर्ड के पत्र सं० **E(P&A)II/2024/Misc./1 Dated 07.03.2024** की प्रतिलिपि सूचना, मार्गदर्शन एवं आवश्यक कार्यवाही हेतु संलग्न कर प्रेषित की जा रही है।

उपरोक्त के कम में यह सुनिश्चित किया जाए कि ट्रिब्यूनल के समक्ष ऐसे मामले में प्रतिउत्तर दाखिल करने से पूर्व पुनरीक्षण के लिए रेलवे बोर्ड के उपरोक्त पत्र के संलग्नक के आधार पर जवाब तैयार किया जाय ताकि ऐसे मामलों का प्रभावी ढंग से प्रतिवाद किया जा सके।

अतः कृपया, रेलवे बोर्ड के उक्त पत्र को संज्ञान में रखते हुए ऐसे मामलों में आवश्यक कार्रवाई सुनिश्चित करें।

संलग्नक/यथोपरि

(गोपाल प्रसाद गुप्ता)
वकाधि/मुख्यालय
कृते महाप्रबन्धक/कार्मिक

प्रतिलिपि निम्न को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित :-

- 1) महामंत्री/एन.ई. रेलवे मजदूर यूनियन/गोरखपुर ।
- 2) महामंत्री/प्रमोटी अधिकारी संघ/पूर्वोत्तर रेलवे/गोरखपुर ।
- 3) पूर्वोत्तर रेलवे प्रथम श्रेणी अधिकारी संघ/गोरखपुर ।
- 4) महामंत्री/एस.सी./एस.टी. एवं ओबीसी एसोसियेशन/गोरखपुर ।

कृते महाप्रबन्धक/कार्मिक

MOST IMMEDIATE

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

No. E(P&A)II/2024/Misc./1

New Delhi, dt. 07.03.2024

**The General Manager s (P),
All Zonal Railways.**

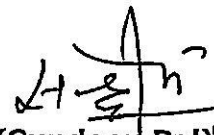
Sub: Contesting of court cases filed by CLIs claiming 55% add-on pay element for computation of retirement benefits.

Recently one of the ZRs has reported filing of a fresh OA before the concerned Hon'ble CAT wherein benefit of 55% pay element for calculation of retirement benefits has been sought by some retired CLIs. Similar cases are likely to be filed in other Zonal Railways as well. It is apprehended that in such cases the applicants are likely to inter-alia rely on the order dated 22.02.2023 passed by the Hon'ble Supreme Court in the matter of UOI & Ors. Vs. Shri Kishan Lall Sharma & Ors. (CA No.3110/2016). In this connection, it is pointed out that the order passed in this case is only a summary dismissal and not a declaration of Law under Article 141 of the Constitution. **Therefore, this has got no precedence value and similar claims of CLIs are not tenable.** Details are given in the brief enclosed (Paras 2.1 to 2.3).

In order to ensure that such cases are effectively contested, Zonal Railways may peruse the above brief and frame their counter replies in such cases based on this brief and submit to this office for vetting before filing of the same before the Tribunal. They may also improve/modify the brief as deemed fit. The contents of this letter may be circulated to all the Divisions falling under the jurisdiction of the concerned Railway. Compliance of circulation may be sent to this office by **15.03.2024**.

Zonal Railways are also advised that any new case(s) filed in the matter may be immediately brought to the notice of this office.

DA: As above


(Sundeep Pal) 07/03/24

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Railway Board
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BRIEF

(COURT CASES WHEREIN 55% ADD-ON PAY ELEMENT HAS BEEN SOUGHT BY CLIs FOR COMPUTATION OF RETIREMENT BENEFITS)

1. Background

On the Railways, there is a category of staff known as "Running staff" whose performance of duty is directly connected with the charge of moving trains. As per Rule 3 (iv) of the Running Allowance Rules, 1981 (**herein after referred to as "The Rules"**) the term Running Staff refers to Railway Servants of the category mentioned below. Running Duties as per Rule 3(iii) of The Rules mean duties directly connected with the movement of trains and performed by Running Staff while employed on moving trains.

LOCO	TRAFFIC
1. Drivers (including Motormen and Rail Motor Drivers, but excluding Shunters).	1. Guards
2. Shunters	2. Assistant Guards/ Brakesmen
3. Fireman (including Diesel Assistants and Electric Assistants.	
4. Second Firemen	

1.1 As per Rule 3 (xvi) of the Rules "**Stationary posts**" refers to **all posts excluding those specified under item 3 (iv) of The Rules.**

1.2 As per The Rules, Running Staff are entitled to Running Allowance which is an allowance specifically granted to the Running Staff in terms of and at the rates specified in the rules/instructions issued from time to time.

1.3 Running Allowance is a composite allowance which includes a portion of the pay and a component to meet out of pocket expenses incurred by Running Staff as their duties generally involve their absence from the headquarters. Basically, Running Allowance is earned by working a train and the quantum of the allowance is

determined by the distance thus worked. It is called Kiolmetrage Allowance. When the Running Staff are sent on stationary duties, they are granted Allowances in lieu of Kilometrage (ALK) at the rates specified.

1.4 As per the provisions of The Rules, 30% of the basic pay of the Running Staff represents the pay element in the Running Allowance and is reckoned for specified purposes, as laid down in these rules.

1.5 Finally, at the time of retirement, 55% of the basic pay of the Running Staff is reckoned for computation of retirement benefits of Running Staff.

1.6 Railway Board vide letter No. E(P&A)II-83/RS-10(iv) dt. 25.11.1992 (RBE No.198/92) effective from 01.01.1993, had issued instructions for filling up the post of Loco Inspector (Stationary post). As per this letter, these posts were to be exclusively filled only from the Loco Running Side on voluntary basis.

1.7 As per para 4.1 and para 5.5 of the letter dt. 25.11.1992, the following was laid down:

(i) In terms of para 4.1 of the letter, benefit of 30% add-on pay element has to be extended during pay fixation on promotion/posting as Loco Inspectors (Stationary Post).

(ii) In terms of para 5.5 of the letter, again for the purpose of pensionary benefits, the basic pay shall also include, an add- on element of 30% of basic pay in the case of Loco Inspectors.

1.8 Thus, the Loco Running Supervisors (CLIs) are virtually granted a cumulative benefit of 69% of add-on pay element in computing their pensionary benefits, which is much more than 55% pay element admissible to all the Running Staff. As the Loco Running Supervisors (CLIs) cease to be running staff from the date of their appointment as Loco Supervisors, they are not entitled for 55% pay element as reckoned in case of Running Category for the purpose of pensionary benefits.

1.9 Granting the benefit as sought would lead to the stationary staff viz. Loco Inspector benefiting to the tune of 101.5% i.e. 30% at the time of pay fixation from switching over from running to stationary post and 55% pay element as granted by the Hon'ble Courts (**e.g. considering BP as Rs. 100 and adding pay element of 30% on it = 130; adding 55% pay element on 130= 201.5%**).

1.10 Admissibility of additional 101.5% pay element is neither admissible to any category of the staff on the Railways nor any Rule provides so. It may be noted that the Hon'ble Courts have not struck down any Rule governing the running staff and without doing so it would be irregular to grant the benefits to the stationary staff which are exclusively admissible to running staff.

1.11 An illustration comparing the rule position and benefit as sought by CLIs vis-a-vis Running Staff is given below for better appreciation. For ease of calculation and understanding, a figure of Rs. 100 has been taken as Basic Pay.

Particulars	CLI		Running Staff
	As per Railway Board's extant rule position envisaged in Board's letter dt. 25.11.1992	As claimed in the Court Case	
(A)	(B)	(C)	(D)
Basic pay (BP)	100	100	100
New BP	BP+30%= 100+30=130 Fixation at the time of promotion to CLI by giving 30% add-on pay element as per para 8 (v) (b)	BP+30%= 100+30=130	100 (BP would remain same as Running staff is not promoted to CLI in this case, he would continue to progress in his cadre. Thus, no fixation benefit (30%) would be admissible.)

Particulars	CLI		Running Staff
Annual increment (3%)	$130+3\%=134$	$130+3\%=134$	$100+3\%=103$
-do-	$134+3\%=138$	$134+3\%=138$	$103+3\%=106$
-do-	$138+3\%=142$	$138+3\%=142$	$106+3\%=109$
Emoluments for the purpose of calculating pension.	$142+30\%=185$	$142+55\%=220$	$109+55\%=169$
Pension	50% of 185= 93	50% of 220= 110	50% of 169= 85

1.12 It is seen from the table above that the CLIs (Stationary staff as explained in para 1.1) will end up getting pension which is approximately 30% more [as depicted in column (C) in table above] than the pension which the staff actually retiring as running staff will get [as depicted in column (D) in table above]. **This would be a grave injustice to such staff.**

1.13 A collective reading of the provisions stated at paras 1 and 1.1 above clearly indicates distinction between the Running category posts and the posts of Loco Inspector as per which the post of Loco Inspector does not fall in the category of Running Staff since the post of CLI is not specified as a post of Running Staff under rule 3(iv) of The Rules. Further, both the posts are governed by separate set of rules as explained in succeeding paras.

1.14 Detailed instructions exist specifically in respect of Running Staff (Guard, Loco Pilot and Assistant Loco Pilot) regarding their roles and responsibilities in connection with running of trains in Chapter IV (Working of trains generally) of the General Rules (GR) for Indian Railways with Subsidiary Rules and Special Instructions of Zonal Railways. **There is no mention of Chief Loco Inspectors** in these rules which further corroborates the fact that they are not connected with running of trains and are therefore not Running Staff.

1.15 It is pertinent to mention that these Rules have been framed under Section 198 of the Railways Act 1989 by the Government of India and the Subsidiary Rules

along with Special Instructions of the Railways are issued by the Authorised Officer on a Zonal Railway, on the authority of GR 1.02 (5).

1.16 The General Rules are printed in bold letters, while the Subsidiary Rules are printed in smaller letters, below the General Rules, with the same numbers of the General Rules which they refer. Subsidiary Rules and special instructions are read in conjunction with the General Rules.

1.17 For appreciation of the above facts, some of the General Rules are reproduced below. Zonal Railways may give the Subsidiary Rules framed by them below the concerned General Rules.

4.04. Time of attendance for train crew.—

Every Guard, Loco Pilot and Assistant Loco Pilot shall be in attendance for duty at such place and at such time as may be prescribed by special instructions.

S.R.4.04. -----

4.05. Proper running line.—

The Loco Pilot shall take his train along the proper running line.

4.08. Limits of speed generally.—

1. (c) The Loco Pilot shall observe the sanctioned sectional speed except when either one speedometer in case of electric loco or two speedometers in case of other locomotives are defective. In such cases of defective speedometers, both the maximum permissible speed and booked speed of coaching train shall be reduced by 10 % from the speed otherwise permissible.

(2) The Loco Pilot shall.—

(a) regulate and control the running of the train according to the Working Time Table, so as to avoid either excessive speed or loss of time, and

(b) not make up between any two stations more time than is allowed in this behalf in the Working Time Table, and shall also observe all speed restrictions.

(3) When it is necessary to indicate to the Loco Pilot where trains are to run at a restricted speed or where trains have to come to a stop due to the

line being under repairs or due to any other obstruction, action shall be taken as specified in Rule 15.09.

SR.4.08.-----

4.19. Guard's and Loco Pilot's equipment.—

(1) Each Guard and Loco Pilot shall have with him, while on duty with his train, the following equipment- (a) a copy of these rules or such portions thereof as have been supplied to him under Rule 2.01.

(b) a copy of the Working Time Table, and all correction slips and appendices, if any, in force on that section of the railway over which the train is to run,

(c) a hand signal lamp,

(d) a whistle (for Guards only),

(e) a red flag and a green flag,

(f) a stock of detonators sufficient to comply with the relevant rules as may be prescribed by special instructions,

(g) a first aid box (for Guards of passenger carrying trains only), and

(h) such other articles as may be prescribed by the Railway Administration in this behalf.

(2) If any Guard or Loco Pilot is not in possession of any article mentioned or referred to in sub-rule (1), he shall report the fact to his superior who shall make good the deficiency.

(3) Each Guard and Loco Pilot shall have with him while on duty with his train, two pairs of such spectacles as he is required to wear under medical advice.

Note.— Each Guard and Loco Pilot should also be in possession of a watch in addition to the equipment prescribed in sub-rule (1).

1.18 From the above, it is amply clear that the Running Staff is exclusively concerned with running of trains whereas the same is not the case with CLIs, rather, the duty list of Chief Loco Inspector does not carry any such instructions specifically connected with Running of Trains. Furthermore, allotment of train running duties, in case of running staff is according to strictly monitored roster with fixed hours and rest periods. The details are mentioned in Board's letter No. 2023/TT-1/76

Staff/07/Duty Hours dt. 12.10.2023 (Copy enclosed). On the other hand, as the duties of CLI are of supervisory nature, their duty hours are not so rigorous and they have flexibility of choosing the train and time of day for inspecting and supervising train crew.

1.19 Some of the duties of CLIs as contained in Ministry of Railway's letter No. E(P&A)II/83/RS-10 dt. 16.04.1999 are given below which clearly demonstrate the fact that there is no comparison of CLIs with Loco Pilots when it comes to running of trains.

1. Locomotive foot-plate inspections, for monitoring performance of locomotives and crews including follow-up of observations.
2. Joint Signal Sighting with TIs and SIs of the division as per instructions laid down.
3. Running room inspection.
4. Running Shed inspection including crew booking office.
5. Surprise night inspection as ordered by concerned officers. Check on wastage, spillage, misuse or pilferage of oil/ coal.
6. To carry out examination of engines failed on line and prepare detailed investigation report in co-ordination with maintenance supervisors.
7. Testing of loco running staff in G&SR, engine-manship and break-down tests. To conduct ambush checks in automatic signalling territory to see whether the drivers are following relevant rules in GR&SR books.
8. Co-ordinate with maintenance staff to give proper attention of the safety fitting on the locomotive.
9. Checking up records maintained in crew booking office including breath analyser equipment for proper functioning and usage.
10. To perform any other duties that may be given from time to time by officers of Diesel / Steam Shed and other officers of the administration.

1.20 CLIs are required to be present in a running Loco in performance of only point No.1 of the duties listed above and that too according to flexibility of train and time of his choice.

1.21 It is also stated that the post of CLI was created due to the administrative requirement of Indian Railways of having in place officials who could perform the above duties.

2. **Important points for raising in counter reply/arguments.**

2.1 Mostly CLIs are giving the arguments that issue has attained finality relying on the orders passed by the Supreme Court in the following cases:

- (i) SLP No.4355/2004 in the matter of UOI &Ors Vs. Krishan Lal saying that the same was dismissed by the Supreme Court vide order dt. 06.07.2004. In this case, the Hon'ble Supreme had passed the following order:

'Delay condoned

In the facts and circumstances of the case, no interference is called for. The Special Leave Petition is dismissed.'

- (ii) Civil appeal No.3110/2016 (Union of India Vs. Kishan Lal Sharma) order dated 22.02.2023.

" Applications for substitution/impleadment/intervention are allowed.

Applications for deletion are allowed, at the risk of the applicant(s).

We are not inclined to entertain these appeals and the special leave petition, which are accordingly dismissed. Pending application(s), if any, shall stand disposed of."

2.2 As can be seen from the above, in both the cases, the Hon'ble Supreme Court had dismissed the petition **in-limine** which is not a declaration of law under Article 141 and therefore the same cannot be cited as precedent for claiming similar benefit.

2.3 While contesting the above points, reference may be given of the following cases:

The Hon'ble Supreme Court had clarified in **S. Shanmugavel Nadar v. State of Tamil Nadu**, (2002) 8 SCC 361; that the doctrine of merger operating upon merger of Hon'ble High Court's order does not hold good when the Court exercises its jurisdiction under Art. 136 in an SLP, further relying upon **Supreme Court Employees' Welfare Assn. v. Union of India**, (1989) 4 SCC 187, the Hon'ble Court held that a summary dismissal without laying down any law is not a declaration of law under Article 141.

2.4 Reference may also be made to the following cases as per which policy decisions are not debatable in judicial forum.

Hon'ble Supreme Court in the matter of Narmada Bachao Andoolan V/s UOI and others (SCC 2000 Vol. 10 page 664) has ruled that "courts in the exercise of their jurisdiction will not transgress into the field of policy decision". Further in the case of **Sumangalam Nagrath V/s UOI and others (SCC 1999 {L&S} 1318)** the Supreme Court has held that "it is not for the Tribunal to examine the wisdom of rules.... policy decision is not debatable in judicial forum".

2.5. **The distinction between CLIs and Loco Pilots** about the fact that CLI are stationary staff and Loco Pilots are Running Staff should be clearly/repeatedly brought out and emphasized in the counter reply and during arguments duly referring to paras 1.13 to 1.21.

2.6 The aspect of limitation should also be looked into on case to case basis as it has been seen in many cases that the applicants are not approaching courts within the period of limitation as prescribed in Section 21 of the Administrative Tribunals Act, 1985. In fact it is seen that in some cases they had retired **more than 20 years ago** and during all these years, they never raised any grievance in respect of their retirement dues and are now filing cases to derive benefit out of the orders passed by the Hon'ble Supreme Court, which in any way are not to be treated as precedents as explained in para 2.1 to 2.3 above.

2.7 The applicants are also quoting Articles 14, 19 and 21 of the Constitution of India. Suitable reply in the matter may be prepared in consultation with Legal Department and contesting Advocate.

2.8 Each and every para of the O.A should be invariably replied to. While doing so favourable judgements of the various Courts, if any, may be quoted.

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

No.2023/TT-1/76/Staff/07/Duty hours

New Delhi, Dated: 21.10.2023

General Manager,
All Indian Railways.

Sub: Rules regarding duty hours of Running staff.

Ref: 1. RB's letter No.E(LL)/2016/HPC/7 dtd. 13.10.2016.
2. RB's letter No.E(LL)/2016/HPC/1 dtd. 28.11.2016.

In continuation of above referred Board's letters, following consolidated guidelines/instructions regarding duty hours of Running staff, are reiterated for information of Zonal Railways.

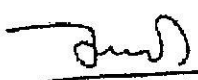
- I). In respect of Loco Pilots (Shunting) who are presently working on fixed roster basis, the existing provisions will continue.
- II). In severe operational exigencies like acts of God, earthquakes, accident, floods, agitations, and equipment failure etc., the Controller should suitably advise the staff that they may be required to work beyond the limits prescribed.
- III). Present classification of running staff under Railway Servants (Hours of Work & Period of Rest) Rules, 2005, should be maintained.
- IV). Subject to exigencies of service, a maximum limit of 125 duty hours per fortnight should be laid down for all Running Staff.
- V). The limit of stay away from Head quarters for Running Staff should be fixed at 72 hours.
- VI). Continuous night duty for Running Staff should be limited to 4 nights with Fourth night towards headquarters.
- VII). As regards the duration of outstation rest, there will be no change in the existing provisions.
- VIII). Call notice period should continue to be a part of the headquarter / outstation rest.
- IX). There will be no change in the existing provisions for Periodical Rest. However, preference should be given to Periodical Rest for 4 periods of 30 consecutive hours.

-(1/2)-



- XI. The principle and period of averaging reckoned for the purpose of payment of Overtime Allowance will continue as per existing guidelines.
 - XII. Total duty at a stretch (from 'sign on' to 'sign off') for the Running Staff should not exceed 11 hours.
 - XIII. Running duty at a stretch should not ordinarily exceed 9 hours. Such duty may extend further provided the railway administration gives at least 2 hours notice before the expiry of 9 hours to the crew that they would be required to perform running duty beyond 9 hours, with the stipulation that the total duty from 'sign on' to 'sign off' shall not exceed 11 hours.
 - XIV. In case the train does not reach its destination, normal crew changing point or the point where the reliever has been arranged, within the overall limit of 11 hours, and such a point is approximately one hour journey away, the Running Staff shall be required to work to that point provided the maximum hours in that trip does not exceed 12 hours.
 - XV. For loco pilots of all Mail/Express trains, the running duty (for the purpose of preparation of links only) should not exceed 8 hours. However P&C time shall not be included within 8 hours.
 - XVI. The above provision for running duty hours and total duty hours shall be applicable to all Running Staff including Loco Pilots (Mail/Express), Loco Pilots (Passenger), Loco Pilots (Freight), Motormen and Guards except wherever stated otherwise.
 - XVII. Subject to exigencies of service, Headquarter rest of all Running Staff will be 16 hours irrespective of the duration of their incoming trip. Further, in exigencies of service, the existing provision will continue to be the minimum condition.
2. The existing provisions of the Railways Act, 1989 and Railway Servants (Hours of Work & Period of Rest) Rules, 2005, other than those mentioned above, will continue to be in vogue.

This has the approval of competent authority.


12/X/23
(J. S. Sehrawat)
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Copy to :- PED/RS, Railway Board for information please.

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