

SOUTH EASTERN RAILWAY

Office of the
Pr.Chief Personnel Officer,
Garden Reach, Kolkata-43.

Estt. Srl. No.256/2019

RB No.NIL

No. SER/P-HQ/Ruling/0/848

Dated: 27-11-19

To
All concerned

**Sub: Counting of casual service of Open Line Casual Labour
and Project Casual Labour prior to attainment of temporary
status for pensionary benefits on their absorption in regular
employment on Railways.**

Ref: Estt. Srl. No. 239/80.

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Railway Board's letter No. E(NG)II/2017/ECR/CL/4 dated 15.11.2019 is forwarded for information, guidance and necessary action.

Encl: As above.



(S.K.Pramanik)
Asstt. Personnel Officer (Court.)
for Pr.Chief Personnel Officer.

SER 330 (Ruling)
31.11.19
No. SER / P-HQ / Ruling / 848 dated

E Ser. no. 255/2019

RB-2083
19/11/19

(13)

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

E(NG)II/2017/ECR/CL/4

New Delhi, Dated: 15.11.2019

The General Manager(P),
All Indian Railways/PUs.

Sub: Counting of casual service of Open Line Casual Labour and Project Casual Labour prior to attainment of temporary status for pensionary benefits on their absorption in regular employment on Railways.

A number of court cases have been filed/are being filed by Railway ex-casual labour for counting their casual service prior to attainment of temporary status for pensionary benefits.

2. As per the extant/settled practice and various rules/circulars of the Railways while 50% of the service after attaining temporary status by the Casual Labour and 100% of service after regularization (taking charge of a regular post) are admissible for counting of pensionary benefits under the pre NPS regime, **no part of casual service prior to attainment of temporary status has been counted for pensionary benefits.** A catena of Railway rules make this position clear and explicit. These include Railway Board's instructions to all Railways dated 14.10.1980 and Para 2005(a) of the Indian Railways Establishment Manual (Vol. II). Rule-14 and Rule 20 of the Railway Services (Pension) Rules also are in consonance with this.

3. However, in a particular case, the Hon'ble Supreme Court vide their judgment dated 24.03.2017 in Civil Appeal No.3938/2017 arising out of SLP(C) No.23723/2015 in case of Union of India Vs. Rakesh Kumar & Ors have directed that the applicant casual worker is also entitled to reckon 50% of casual service for purposes of pension before attaining temporary status. This order of the Hon'ble Supreme Court is on the basis of Rule 31 of the Railway Services (Pension) Rules which mentions that half of the service during which payment has been made from contingency has to be counted as qualifying service for pension.

4. This Rule 31 of the Railway Services (Pension) Rules provides for counting of service paid from contingencies for pension on the basis of instructions issued by Ministry of Finance vide O.M. No. F.12(1)-EV/68 dated 14.05.1968. **These instructions issued by Ministry of Finance are, however, no longer applicable to Casual Labour after the notification of CCS(Pension) Rules, 1972 as has been recently clarified by DoP&PW vide their reply dated 13.08.2019 (copy enclosed).** Based on the principle of equivalence, the effect of supersession of this O.M. dated 14.05.1968 extends also to the Casual Labour on the Railways. This analogy/equivalence is, however, to be reconciled with Board's instructions dated 14.10.1980 which extended the benefit of Ministry of Finance O.M. dated 14.05.1968 to a Casual Labour on the Railways only for that part of service which he had rendered after attainment of temporary status. Since this decision was a conscious decision taken in consultation with the then Ministry of Home Affairs

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(Department of Personnel and Administrative Reforms) and the Ministry of Finance, it shall remain operative/applicable despite supersession of O.M. dated 14.05.1968 of the Ministry of Finance. In this situation, Rule 31 of the Railway Services (Pension) Rules till the time it is formally amended, will have to be read jointly with these instructions dated 14.10.1980 notwithstanding supersession of O.M. dated 14.05.1968 of the Ministry of Finance.

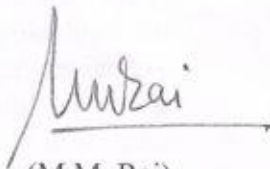
5. Since DoP&PW, in their reply dated 13.08.2019, have suggested that DoPT's advice may also be taken in the matter, DoPT has also been requested by this Ministry vide O.M. No. E(NG)II/2017/ECR/CL/4 dated 20.09.2019 to confirm interpretation of rules/guidelines that only 50% of temporary status service would be counted for pensionary benefits after regularization of Casual labour and that period prior to temporary status would not count for Pensionary benefits.

6. Though reply/confirmation of DoPT in the matter is awaited, **DoP&PW's confirmation of this Ministry's position in the matter and their clear views on the supersession of the Ministry of Finance OM No. F.12(1)-EV/68 dated 14.05.1968 and the consequential impact on rule 31 of the RS(Pension Rules) is significant.** All Railways may take note and make use of this while contesting similar Court cases on this issue, as **DoP&PW is the nodal Department regarding Pensions & Pensioners' welfare as has been confirmed by Ministry of Finance vide their OM No. F.1(5)/EV/2019 dated 11.11.2019 (copy enclosed).**

7. These views brought out at para-4 & para-5 above can be useful while contesting Court cases of Commission Bearers / Vendors also wherein a spate of Court cases have been filed in several Railways. In spite of the Railways' stand on the matter that equivalence between Casual Labour & Commission Bearers cannot be established, Hon'ble Courts of law are often drawing analogy between Casual labour and Commission Bearers/Vendors and are treating both at par in the context of counting of 50% of service before absorption rendered by the latter also for pensionary benefits.

8. This issues in consultation with the Finance Directorate.

D.A: as above.


(M.M. Rai)
Joint Director Estt.(N) II
Railway Board

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JDE(N)II
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SO-3/E(NG)II

No. 28/03/2019-P&PW(B)
Government of India
Ministry of Personnel, P.G. and Pensions
Department of Pension & Pensioners' Welfare

3rd Floor, Lok Nayak Bhavan,
New Delhi, Dated the 3rd August, 2019

EPE(N)

OFFICE MEMORANDUM

Subject: Counting of the period of service of Open line Casual Labour and Project Casual Labour before their attainment of Temporary Status as qualifying service for pensionary benefits on absorption in regular employment in Railways.

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JDE(N)II

The undersigned is directed to refer to Ministry of Railways' O.M. No. E(NG)II/2017/ECR1CL/4 dated 31.07.2019 on the subject mentioned above and to say that as per Rule 2 of the CCS(Pension) Rules, 1972, these rules are not applicable to persons in casual and daily-rated employment.

SO-3/E(NG)II

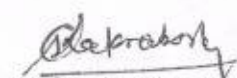
2. Further, Rule 89 of CCS (Pension) Rules reads as under :

" 89. Repeal and Saving.

(1) On the commencement of these rules, every rule, regulation or order including Office Memorandum (hereinafter referred to in this rule as the old rule) in force immediately before such commencement shall, in so far as it provides for any of the matters contained in these rules, cease to operate".

3. Therefore, the OM dated 14.05.1968 issued prior to notification of CCS(Pension) Rules, 1972 may be ceased to operate in terms of Rule 89.

4. The matter of regularization of casual labours are administered by DoPT. DoPT vide their scheme of regularization of casual labours has issued guidelines for regularization of casual labour and counting of their contingent service for pensionary benefits in 1993. The said scheme states that the 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularisation. Therefore, Ministry of Railways may consult DoPT for advice in the matter.


(S. Chakrabarti)

Under Secretary to the Government of India

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Shri M. M. Rai,
Joint Director Establishment (N)II,
Railway Board,
Ministry of Railways,
Rail Bhawan.

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F. No.1(5)/EV/2019
Government of India
Ministry of Finance
Department of Expenditure
E-V Branch

North Block, New Delhi
Dated the 17th November, 2019

OFFICE MEMORANDUM

Subject: Counting of the period of service of Open Line Casual Labour and Project Casual Labour before their attainment of temporary status as qualifying service for pensionary benefits on absorption in regular employment on Railways - reg.

The undersigned is directed to refer to Ministry of Railway's OM No. E(NG)II/2017/ECR/CL/4, dated 05.09.2019 on the subject cited above and to say that the matter does not pertain to this Department and comes under domain of Department of Pension & Pensioners' Welfare who are the nodal Department for pension related issues. Ministry of Railways is, therefore advised to take up the matter with Department of Pension & Pensioners' Welfare being the nodal department for pension related matters.

2. This issues with the approval of competent Authority.

SO-3/E(NG)II
17/11/19

Gulveena
(Gulveena Badhan)

Under Secretary to the Govt. of India
Tel No:-2309 5680

Ministry of Railways
Railway Board
[Kind Attn: Shri M M Rai, Joint Dir. Estt. N(II)]
Rail Bhawan,
New Delhi-110 001