

GOVERNMENT OF INDIA/भारत सरकार
MINISTRY OF RAILWAYS/रेल मंत्रालय
(Railway Board) रेलवे बोर्ड

No. E(P&A)II-2017/HW-1

New Delhi, dt. 19.11.2020

OFFICE MEMORANDUM

Sub: Review/re-consideration of the decision imposing a ceiling-limit of Basic Pay of Rs. 43600/- for entitlement of Night Duty Allowance to Railway employees-regarding.

The undersigned is directed to refer to DoPT's OM No. A-27016/02/2017-Estt. (AL), dated 13.07.2020 regarding implementation of Government decision on 7th CPC's recommendations on Night Duty allowance (NDA) which has been adopted by Ministry of Railways, and instructions to Zonal Railways prescribing a ceiling limit of basic pay of Rs.43600/- have been issued vide Board's letter of even number dated 29.09.2020 (RBE No.83/2020) (Annexure-I). Railway's Federations/Unions/Associations, however, have demanded for review/re-consideration of the decision imposing a ceiling-limit of Basic Pay of Rs. 43600/- for entitlement of Night Duty Allowance to Railway employees. They have submitted the following specific demand for consideration:-

- i. The ceiling-limit as prescribed vide letter dated 29.09.2020 be withdrawn.
- ii. NDA already paid to the Railway employees who have now got out of the purview of NDA for the period from 01.07.2017 to 29.09.2020 may not be recovered.
- iii. The matter be referred to DoP&T highlighting the uniqueness and complex working in Railways to review and allow Railways to sort out the matter in consultation with the Federations.

2. The aforesaid demand of the Federations/Unions/Associations have been examined in this Ministry. While considering Federations' aforesaid demands, Railway Board have decided to refer the matter to DoP&T for clarification and, in the interim, recovery of NDA from Railway employees who have become ineligible for the same after issue of Board's letter dated 29.09.2020 (RBE No.83/2020) be deferred until further orders. Necessary orders for deferment of recovery against NDA have been issued vide Board's letter of even number dated 06.11.2020 (RBE No.96/2020) (Annexure-II).

3. It is pertinent to mention that earlier during 4th CPC period, the instructions dated 14.10.1988 (Annex.-III) were issued after consultation with DoPT wherein DoPT on 12.09.1988 (Annex.-IV) had given its clearance to go ahead with the notification of the revised rates of Night Duty Allowance, for that time prospectively, inter-alia with the stipulation that, "there need be no ceiling for entitlement of Night duty Allowance provided the official is put on regular night duty and that it will be given only to the officials who are at present getting the benefit". After issue of the instructions dated 04.10.1989 of DoPT, prescribing a ceiling limit of Rs.2200/- they have issued instructions dated 13.07.2020 prescribing a ceiling limit of basic pay of Rs.43600/-.

4. In the above context, it is stated that working of Railways is quite different from the other departments of the government. It operates 24X7 throughout year with almost same volume of traffic operations in the night as in the day. In view of the nature of duties and for safe and smooth operations of trains, it is necessary that a substantial number of staff are posted for night duties and to keep the staff motivated for working during the odd night hours they needs to be suitably compensated.

5. In view of the above, DoPT is requested to give liberty to the Ministry of Railways to decide the issue of prescribing pay ceiling for entitlement of NDA for railway employees, to implement pay ceiling criteria for NDA on prospective basis in respect of railway employees and consequent non-recovery of NDA from those employees who has become ineligible for NDA due to pay ceiling criteria, in consultation with the Federations.

6. A Brief on NDA in Railways is enclosed. (Annexure-V)

DA: As above.



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Annexure-V

Brief on Night Duty Allowance (NDA) in Railways

1. Background

1.1 NDA was introduced in the Railways on the recommendations of 2nd CPC w.e.f 01.08.1962 vide Board's letter dt. 07.07.1962 (Annexure-VI) as **compensation for night working** which is in the nature of overtime allowance to such categories of staff whose duty involves continuous application to work during the whole of the night shift and not to night shifts in general provided they satisfy the yardsticks mentioned therein and provided they are treated as 'Continuous' or 'Intensive' workers under the Hours of Work and Period of Rest Rules, 2005 (HOER).

2. This allowance was dealt extensively by Mia Bhoj Tribunal in 1969 and the present dispensation is based on the recommendation of the said tribunal (para 8.17.72 of 7th CPC report). In the year 1973, the Railway Labour Tribunal, 1969, inter-alia, recorded the following decisions:-

"1. The demand of the Federation that night duty allowance should be granted to all railway employees irrespective of their classification or irrespective of their pay limit, which is at present imposed, is granted;

"2. The demand the "normal rate of pay" should include not only Dearness Allowance but also Compensatory Allowance (other than House rent) is also granted"; and

"3. The demand of the Federation that Dearness Allowance as revised or reviewed from time to time should be included for calculation of the ordinary rate of pay is granted too". The said decision of the Labour Tribunal was accepted by the Ministry of Railways and necessary instructions were issued vide Board's letter dt. 09.03.1973 (Annex.VII). A perusal of the above instructions reveals that criteria of ceiling limit of basic pay for the purpose of NDA was done away with.

3. Pursuant to the recommendations of 4th CPC, the instructions dt. 14.10.1988 (Annex.VIII) regarding NDA were issued for the all categories of Railway employees classified under HOER as 'Intensive', 'Continuous' and Excluded and 'Essentially intermittent' without any basic pay ceiling limit. However, pursuant to the recommendations of 4th CPC DoPT vide OM dated 04.10.1989 issued instructions on NDA prescribing a ceiling limit of basic pay of Rs.2200/-. As there was no such ceiling limit in respect of Railway employees in the instructions dt. 14.10.1988 issued pursuant to 4th CPC recommendations, Railway employees were treated differently, perhaps in the backdrop of the decision of Railway Labour Tribunal, 1969.

3.1 The instructions dated 14.10.1988 were issued after consultation with DoPT wherein DoPT on 12.09.1988 (Annex.-IX) had given its clearance to go ahead with the notification of the revised rates of Night Duty Allowance, for that time prospectively, inter-alia with the stipulation that, "there need be no ceiling for entitlement of Night duty Allowance provided the official is put on regular night duty and that it will be given only to the officials who are at present getting the benefit".

4. During 5th CPC and 6th CPC periods, as well, instructions for payment of NDA to all categories of Railway employees classified under HOER as 'Intensive', 'Continuous' and Excluded and 'Essentially intermittent' were issued vide letters dated 25.09.1998 (Annex.X) and 16.12.2008 (Annex.XI) respectively without any basic pay ceiling limit.

5. Consequent upon the recommendations of the 7th CPC, based on Govt. of India's resolution dated 06.07.2017, instructions regarding Night Duty Allowance (NDA) for Railway employees were issued vide letter dated 08.03.2018 (Annex.XII) whereby NDA was allowed to all the eligible categories of non-gazetted Railway Servants classified under chapter XIV of the Railway Act, 1989 read with the Railway Servants (Hours of Work and Period of Rest) Rules, 2005. These instructions were in line with the earlier instructions issued vide this Ministry's letters dated 25.09.1998 and dated 16.12.2008 issued during the 5th and 6th CPCs period respectively. However, Board's letter dt. 08.03.2018 specifically mentioned that these orders would be subject to modification, if any, after the issue of instructions by the Nodal Ministry i.e. Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training).

6. Issue:

6.1 After Department of Personnel & Training – the nodal Department for NDA - having issued instructions on Night Duty Allowance vide its O.M. No. A-27016/02/2017-Estt.(AL) dated 13.07.2020, further instructions for Railway employees incorporating therein the ceiling-limit of Basic Pay of Rs. 43600/- per month for entitlement of Night Duty Allowance effective from 01.07.2017 have been issued vide letter dated 29.09.2020 (Annex.-XIII).

6.2. After issue of Department of Personnel & Training's OM dated 13.07.2020, Railway Federations had requested Railway Board not to follow the said instructions so far as the ceiling-limit is concerned. However, the Competent Authority decided to follow the guidelines issued by DoPT, the nodal Deptt. on the subject of NDA. After issue of further instructions prescribing a pay ceiling-limit of Rs. 43600/- for entitlement of NDA vide Board's letter dated 29.09.2020, Railway Federations/Unions/Associations have expressed their displeasure and discontent over the same.

6.3 The Federations/Unions/Associations in support of their demand for continuation of NDA for all categories of Railway employees irrespective of pay ceiling limit have contained as under:-

- a. All Group 'C' Railway employees (working in GP 1800 to 4600, PB-1 and 2) are eligible to receive Night Duty Allowance (NDA) as could be verified vide Board's letters dated 09.06.2016, 14.12.2016, 17.11.2017 and 08.03.2018. These provisions are also applicable to the Group 'C' Railway employees in GP 4600 and also those who got financial upgradation under MACPS in GP 4800 and 5400 respectively.
- b. Since 6th CPC-pay of Railway employees has been fixed in 7th CPC-pay levels after applying multiplication factor of 2.57, similar criteria should have been applied for fixing rates of Night Duty Allowance without imposing any ceiling limit.
- c. With the issuance of Railway Board's instructions vide letter dated 29.09.2020, prescribing pay ceiling of Rs. 43600/-, the Railway employees working even in GP 1900, 2000, 2400 (Pay Level 2, 3, 4 and above) have been deprived of Night Duty Allowance, although they continued to perform night duty for smooth running of train services at all times.
- d. The decision of Railway Board vide letter dated 29.09.2020 prescribing pay ceiling of Rs. 43,600/- w.e.f. July 1, 2017 would also cause financial hardship to the staff who have already been paid Night Duty Allowance at the rates prevailed till date as it may lead to recovery of NDA already paid. This situation may lead to resentment and agony among Group 'C' employees of all pay levels.
- e. It is a matter of serious concern that while issuing circular dated 29.09.2020, no cognizance has been given to the Federation's earlier letter dated 31.07.2020 whereby it was clarified that Railway staff are paid NDA based on the recommendations of Justice Miabhoj Tribunal and as per recommended formula of the 7th CPC under paras 8.17.71 to 8.17.77.
- f. Since Indian Railways is operating 24*7 round-the-clocks throughout the year in all weather conditions and seasons of our country, railwaymen, irrespective of their grade or pay scale, are bound to perform **night duty** between **22:00 to 06:00 hours** to keep the wheels moving. Therefore, capping of upper pay limit of Rs. 43600 for entitlement of **Night Duty Allowance** is highly unjustified and irrational. It is not understood as to why this type of orders have been issued by Railway Board vide RBE No. 83/2020 dated 29.09.2020.
- g. Railway Board vide letter dated 29.09.2020 have issued orders laying down ceiling for entitlement of payment of Night Duty Allowance, and these orders have been made effective from 01.07.2017. This is resulting in recovery of huge amount, amounting to lakhs of Rupees from the employees. There is serious resentment and unrest amongst the staff owing to this recovery, which is highly unjustified as well, because the payment was made in terms of Railway Board's letter dated 08.03.2018 .
- h. The NDA eligibility with ceiling of Basic Pay of Rs. 43600/- is a violation of

Justice Miabhoy Tribunal 1969 award. Railway Board cannot supersede its 1989 order which was in line with Railways Act, 1989 by which not only the IVth CPC imposing ceiling of Rs. 2200/- as entitlement of basic pay was made not applicable to railway employees but also enabled to uphold award pronounced by Justice Miabhoy Tribunal, which gave way for NDA for all Railway employees performing night duty without any ceiling.

- i. NDA to the Station masters and other Railwaymen are paid as per the award of justice Miabhoy Tribunal 1969 and even the 7th CPC as per para 8.17.72 mentioned about it very clear that its recommendations were based on the Justice Miabhoy Tribunal and vide para 8.17.71 to 8.17.77 recommended NDA with formula. Railway Board had also accepted the recommendations of NDA with effect from 01.07.2017 for all non-gazetted Railway servants, irrespective of their pay classified under chapter XIV of Railway Act, 1989; those classified under intensive, continuous and EI are eligible for NDA.
- j. The Station Masters and other Railwaymen are working round the clock, including night hours which is strenuous and against the nature. The rider which restricts the Basic Pay to Rs. 43,600/- per month for calculating NDA rate is discriminatory and arbitrary and therefore, it is requested that the ceiling of basic pay Rs. 43,600/- for entitlement of Night Duty Allowance be withdrawn.
