



# ALL INDIA LOCO RUNNING STAFF ASSOCIATION

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10th May, 2024.

To

The Deputy Chief Labour Commissioner (Central),  
No.6, Haddows Road, A Wing, 5<sup>th</sup> Floor,  
Shastri Bhavan, Nungambakkam,  
Chennai - 600 006.

Sir,

Sub: HOER - Judgement of Hon'ble High Court of Judicature at Chennai in W.P.No.23389 of 2013 dated 26.04.2022 - implementation of- Reg. Ref: (i) RLC/C/Chennai Lr. No.47/I/HOER/2024 dated 02.04.2024 (ii) The Divisional Personnel Officer, Southern Railway, Madurai Division letter No.P(L)347/I/HOER/Pt.I/2022 dated 17.04.2024.

The Workmen Association is in receipt of a copy of the letter dated 17.04.2024 submitted by the Divisional Personnel Officer, Southern Railway, Madurai Division, under reference(ii) above. After having carefully gone through the same, the Workmen Association hereby denies all the averments, allegations and contentions raised therein, save those that are admitted hereunder:

2. The paragraphs in the letter submitted by the Divisional Personnel Officer, have not been numbered and therefore, for the sake of convenience, the paragraphs in the aforesaid letter are being numbered, beginning from 1 to 14, for the convenience of answering the contentions of the Railway authorities.

3. On Paras 1 & 2: In this paragraph, respondents state that the job analysis has to be conducted for 72 consecutive hours, as per the "D.O.No.E(LL)/73HER/33/Pt.A.11 issued by the Ministry of Railways, New Delhi dated 28.06.1974." However, a copy of the said D.O. letter has not been produced.

4. On Paras 3 : The contentions in this paragraph that the Running staff of Madurai Division are working on the basis of link roster and that the rosters are so planned that

at no time, Loco Pilots working hours at a stretch would exceed 8 hours. This contention is wrong. There are Loco Pilots/Mail, Loco Pilots/Passenger and Loco Pilots/Goods. Link rosters are provided only in the case of Loco Pilots/Mail and Loco Pilots/Passengers and even in such cases, it is always not true that same are so planned that no-one works beyond 8 hours at a stretch. Incidentally, it is also submitted that one of the questions involved is, should a Loco Pilot/Passenger or Loco Pilot/Mail be expected to work beyond 6 hours, since the classification is to be declared as 'Intensive'. Again it is submitted that in the case of Loco Pilots/Goods, no links are provided and the Loco Pilots/Goods are expected to work for hours together and mostly upto 12 hours at a stretch. While contending that job analysis on stationery loco undertaken by the RLC(Central) cannot give a true picture, the respondents do not give an alternative procedure to be followed for conducting job analysis of Loco Pilots/Goods, Passenger or Mail as the case may be. At any case, the averments in this regard in Para 3 is in contrast to the their own averments in Para 2, wherein they say that the job analysis are to be undertaken as per the Railway Ministry's order dated 28.06.1974. There are no orders of the Railway Board or of any authorities holding that no job analysis in the case of running staff can be taken, so as to decide whether the classification is to be declared as "intensive" or "Continuous".

5. As regards the contention in Para 4, the respondents admit the directions of the Hon'ble High Court of Judicature at Chennai in W.P.No.23389/2013. Incidentally, the humble Workmen submits in the Writ Petition filed by the Management, in Paragraph 9 on facts, the Management has stated as follows:

*"... As per the Act, the job analysis has to be carried out for analysing the nature of job which is as per Section-5 of the Act, which provides 4 types of methods i.e. (1) Rough Assessment Method, (2) Representative Method, (3) The method of Issuance of Certificate by the branch Executive Officer (4) Factual Job Analysis for 72 consecutive hours during normal conditions. The Section provides that the first 3 methods may be used to obtain quick results, only the 4<sup>th</sup> method i.e. the Factual Job Analysis is most suitable and decisive in disputed cases. This Section finds prominence because the 3<sup>rd</sup> respondent while deciding the issue adopted the Rough Assessment Method."*

6. In Paragraph 11 it is again, the Railway Management had stated as follows:

*"Therefore, the Railway Board was referred for permission to enter the train engine to conduct the job analysis in the running train, which was not permitted to the 3<sup>rd</sup> respondent as per the Railway Board's proceedings No.2009/Safety(A&R)19/16 dated 19.08.2009, as no person other than a Railway staff, Commissioner for Railway Safety and Chief Commissioner for Railway Safety are normally permitted to travel on locos in view of safety considerations. In spite of this proceedings, the 3<sup>rd</sup> respondent conducted an imaginary job analysis on a stationary loco of Vaigai*

*Express (2636). Moreover, the job analysis has to be conducted for consecutive 72 hours as per the instructions contained in the Railway Board's letter No.E(LL)73HER/33PTA.11 dated 28.06.1974, issued by the Ministry of Railways, New Delhi. The factual job analysis should be conducted for 72 hours, whereas the job analysis conducted by the third respondent was only from 05.30 am to 12.30 pm on a stationary loco. Hence, the job analysis is not a factual job analysis which is mandatory for any reclassification."*

As grounds also it is stated in the Writ Petition as follows:

*"(e) The respondents failed to see that the job analysis done by the third respondent is on a stationary loco and any recommendation based on the job analysis by the third respondent is factually incorrect.*

*(f) The respondents 1&2 failed to see that any factual job analysis has to be conducted for 72 hours continuously and in contrary, the job analysis conducted by the third respondent was only for one day and that too in a Stationary loco, which cannot be taken as a basis for directing the petitioner to reclassify the classification of Loco Pilots from continuous to intensive."*

[Emphasis supplied]

Thus it is clear, that before the Hon'ble High of Judicature at Chennai, it was the consistent stand of the Railway Management that the job analysis has to be conducted on factual basis and that has to be conducted for a consecutive period of 72 hours. It was never the case of the Railway Management that such a job analysis is not possible in the case of Loco Pilots. They also do not indicate, an alternate method of conducting job analysis, while admitting that there is no exception in the case of Loco Pilots in the matter of re-classification of their rosters as intensive or in the matter of technical job analysis. It is only in the light of their consistent stand that the Hon'ble High Court in its judgement in W.P.No.23389/2013 was pleased to direct the authorities to conduct the factual job analysis in a running train with 72 hours. Now it is not open for the Railway authorities to turn back and say that factual job analysis is not possible, in the case of Loco running Staff.

7. Incidentally at this juncture it is to be pointed that the Railway Board order of the year 1974 has actually no application at present in the light of the specific provisions, contained in Rule 7 of the Railway Servants (Hours of Work and Period of Rest) Rules, 2005. It may be seen that in terms of the above rules, the criteria for determining classification of Railway servants has been provided for. Rule 7 reads as follows:

*"7. Criteria for determining classification of railway servants-*

*(1) Continuous: All employments of Railway servants except those excluded from the purview of the Hours of employment Regulations are assumed to be 'Continuous'. Thereafter, on the basis of the factual job analysis the employment*

may be classified either as 'Intensive' or 'essentially intermittent', as the case may be.

(2) Intensive: The two important factors in declaring an employment as 'Intensive' under Clause(d) of Section 130 of the Act are:

- (i) Strenuous nature of the work tending to cause mental or physical strain; and
- (ii) Continuous application to such work with little or no periods of relaxation.

**Explanation I:** The term continuous concentration in clause (d) of the Section 130 is intended to convey that the attention demanded of the Railway servant concerned for a particular nature of job should be exclusive not to allow any other thought or idea to enter the mind and must be of such nature as to cause strain (physical or mental or both) upon the Railway servant concerned as a result of continuous application to such work over certain period without reasonable periods of respite. Thus, having regard to the entire period of duty and nature of work, the prescribed authority shall, before declaring any employment as 'Intensive', satisfy itself that the above factors are present in the job concerned. In other words, the prescribed authority shall consider whether the job is of such a character that it demands continued concentration without any reasonable periods of relaxation.

**Explanation II:** Factor (ii) should be considered to have been satisfied where the periods of rest, inaction or relaxation do not aggregate 6 hours or more in a cycle of 24 hours or one hour or more in a shift of 8 hours."

[Emphasis supplied]

8. It may be seen that the expression 'sustained attention' used in sub section(b) of Section 130 of the Railways Act, 1989 attains significance only when an 'essentially intermittent' classification is required to be re-classified as 'continuous'. As against the provisions in Section 130(b) in the matter of employment of Railway servants as 'essentially intermittent", it is specifically provided in Section 130(d) as follows:

"(d) the employment of a railway servant is said to be "intensive" when it has been declared to be so by the prescribed authority on the ground that it is of a strenuous nature involving continuous concentration or hard manual labour with little or no period of relaxation."

[Emphasis supplied]

This is explained under Rule 7(2) as extracted in para 7 above. In other words, what is required to be considered is (1) whether the nature of work tends to cause mental or physical strain and (2) whether the nature of duties involve continuous application of such work with little or no periods of relaxation. The Explanation II below Rule 7 categorically states that Factor(ii) i.e. continuous application of such work with little or no periods of relaxation should be deemed to have been considered, "*where the period of rest, inaction or relaxation do not aggregate 6 hours or more in a cycle of 24 hours, or one hour or more in a shift of 8 hours*". So it is enough for the purpose of job analysis, i.e. to determine whether a classification is to be changed as intensive or not, to see whether the nature of work strenuous is strenuous to cause mental or physical strain, and (ii) whether continuous concentration is required for discharging the duties. It may

be seen that in a shift of 8 hours, what is to be seen, is whether there is a period of relaxation, or inaction for one hour or more.

9. If there is no period of relaxation for a period of one hour or more in a shift of 8 hours, necessarily the roster has to be classified as intensive. This is the statutory provision as contained in Rule 7. The Railway management cannot have, a case that the nature of duties is not strenuous tending to cause mental or physical strain or both. Moreover, there is also no case that the nature of duties involve period of rest for more than one hour in a shift of 8 hours. In this connection, it is submitted that right from the time the Loco Pilot signs 'ON', he is under continuous concentration until the loco is started discharging various duties including checking of loco, formation etc. etc. and once the train starts also, he has to be continuous concentration, till the train is brought to a stop at the destination station. This is because the running of train involves continuous concentration to see various aspects like signals, level crossing of gates, warning boards etc. Etc, and not only that it is submitted that even one wink would result in a major disaster, Considering the fact that the train normally runs at a speed higher than 110 km per hour. It is also submitted that in order to keep the train moving, the Loco Pilot has to continuously operate a Vigilance Control Device provided in the loco every minute, so as to keep the train moving. If the Vigilance Control Device is not acted upon for a minute, the brake will automatically apply and the train would come to a stop. In trains like MEMU, the device is called as Dead Man's Handle, which has to be continuously pressed, the hand is taken away from the handle, automatically the brake will apply and the train will come to a stop. These facts are known to the Railway authorities and in spite of these conditions, the respondents refer to the 1974 letter which is not even an order but a D.O. letter (Demi-Official) and state job analysis is impermissible, when they themselves, state that job analysis has to be conducted for a period of 72 hours (though against Rule *ibid*).

10. As regards the contentions in para 5, it is submitted that the Review Application said to have been filed by the respondents, i.e. Writ Petition No.23389/2013, has not been listed for admission nor has it been admitted so far. The Railway management is quite aware that they cannot go back from their own averments in the Writ Petition and take a contra averment in the Review Petition stating that a factual job analysis is not possible in a period of 72 hours.

11. As regards the contention in Para 7, there is no doubt that the running of a train is a technical job to be carried out by technically qualified person. The contention that "*Job analysis for running staff has to be conducted for minimum of 72 hours in running*

*train and the Regional Labour Commissioner may not have requisite expertise to conduct factual job analysis.*” are devoid merit and substance. Regional Labour Commissioner is competent and empowered to conduct factual job analysis. The respondents cannot say that the Regional Labour Commissioner is do not have the requisite expertise to conduct a factual job analysis. All that is to be looked into in the matter of job analysis in classification on intensive, is whether the nature of duties are strenuous tending to cause mental or physical strain and whether it requires continuous concentration. No other expertise is required for conducting a job analysis for the purpose of classification of a particular roster as intensive.

12. The respondents state that nowhere the RLC is empowered to conduct a fresh job analysis by himself. It is not for the Railway management to find fault with the judgement of the Hon’ble High Court of Judicature at Chennai which is obtained by the Railway authorities themselves by filing Writ Petition challenging the orders of the RLC. They cannot say that they will not be bound by the orders obtained by them in the Writ Petition filed by them before Hon’ble High Court of Judicature at Chennai. The judgement was rendered purely based on the averments Railway Management itself had made in the matter of conducting of a job analysis.

13. On Para 8: The various contentions in this paragraphs are not germane to the issues involved. The only question to be looked into is what arrangements will have to be made so that the Regional Labour Commissioner(Central) can conduct a job analysis as directed by the Hon’ble High Court of Judicature at Chennai. It is not for the Railway management to contend that the RLC has not been authorised etc at this distance of time.

14. On Paras 9 and 10: The averments are devoid of merit and substance since the same runs contra to the directions of the Hon’ble High Court of Judicature at Chennai. It is well settled, once the judgement has become final, it has to be implemented even in case ultimately found to be wrong. It is not for one party to contend that the judgement is wrong and refuse to obey the same.

15. On Paras 11 to 14: The averments are also devoid of merit and substance. In so far as the judgement of the Hon’ble High Court of Judicature at Chennai in W.P.No.23389/2013 remains, the Railway management is bound to obey and implement the same and enable the Regional Labour Commissioner to conduct the job analysis, as ordered by the Hon’ble High Court. Any obstruction to conduct the job analysis as ordered by the Hon’ble High Court would be nothing short of an unlawful

interference in the due administration of justice amounting to a criminal as well as civil contempt of the Hon'ble High Court.

In view of the reasons stated above, it is humbly Regional Labour Commissioner (Central) please to reject as directed by the Hon'ble High Court of Judicature at Chennai, at the earliest.

Thanking You

Yours faithfully



K C James,

Secretary General, AILRSA.

Ernakulam,  
10.05.2024.