

MASTER CIRCULAR

Master Circular No. 27

Legal and Financial Assistance to Railway Servants Involved in Legal Proceedings.

The instructions issued by the Railway Board from time to time on the subject of Legal Assistance to Railway Servants involved in legal proceedings are contained in several letters. The Board have now decided to issue a consolidated master circular, as below, on the subject for the information and guidance of all concerned.

2. A Railway servant may be involved in legal proceedings in the cases in which acts are done.

- i. In the execution or performance of the official duty;**
- ii. Not in the execution or performance of the official duty, but by virtue of or having connection with the official position; and**
- iii. In neither of the above capacities.**

[Ref: Board's letter No. [E\(G\)59 LL 2/5 dated 21.07.1960](#)]

2.1 Cases falling under (iii) above may be those in which a Railway servant may be guilty of bribery/ illegal gratification/ corruption etc. accepted or committed not by virtue of his official position but in his private dealings. No reimbursement of the legal expenses incurred by the Railway servant in defending his position in such cases will be admissible. Also the Government will not provide any assistance to a Railway servant or reimburse the expenditure incurred by him in respect of matters not arising out of his official duties or connected with his official position, irrespective of whether the proceedings were initiated by a private party against the Railway servant or vice-versa.

[Ref: Board's letter No. [E\(G\)59 LL 2/5 dated 21.07.1960](#)]

3. Law suits arising out of circumstances connected (i) with the execution or performance of the official position of the Railway servant or (ii) with the official position of the Railway servant.

When a law suit arising out of the circumstances connected with the duty of a Railway servant is brought against him by a Private party, the following provisions will apply.

- a.**
 - i. If the Railway servant is sued by a party claiming from him wages or money arising out of transactions in which he is concerned only in his official capacity and bonafide action on behalf of the Govt., it will be necessary for him to defend the suit by pleading that the Govt. should be made the defendant as the party really interested;**

- ii. **If, however, the suit against the Railway servant is for damages in respect of an alleged act of the Railway servant as an employee of the Govt. i.e. a suit for wrongs, the party aggrieved may, as a general rule, bring the suit against such a Railway servant and it would be no defence for the latter to contend that he has a right to look to the party by whose act he has been aggrieved, whether he could or could not have sued that party's principal;**
- iii. **Whether the suit falls in category (i) or (ii) above the railway servant, on his failing to defend the suit or reply to the plaint in person or by a Counsel becomes personally responsible;**

b.

- i. **If the Govt. on consideration of the facts and circumstances of the case, decides that it will be in the public interest for it to undertake the defence of the Railway servant in such proceedings and if the Railway servant agrees to such a course, the Govt. should make arrangements for the conduct of the proceedings, after the railway servant makes the following written statement:**

" _____ Description of the Proceedings to be given."

The Govt. of India, having been pleased to undertake my defence in the above proceedings, I hereby agree to render such assistance to the Govt. as may be required for my defence and further agree that I shall not hold the Govt. in any way responsible, if the proceedings and in a decision adverse to me.

.....

Signature of the Govt. servant

Dated.....

- ii. **Where, in a civil suit, a Railway servant is sought to be made liable for damages for acts or negligence in the discharge of his official duties of civil nature and Govt. is impleaded on the ground of vicarious liability, the Govt. should arrange for the defence of the Railway servant also, provided the defence of the Govt. and that of the Railway servant are substantially the same and there is no conflict of interest. Each case should be examined by the Law Officer before undertaking common defence. If the Railway servant's defence is arranged by the Govt., he should be required to make a written statement as given in para b(i) above.**
- iii. **If a Railway servant proposes to conduct the defence in such proceedings himself, the question of reimbursement of reasonable costs incurred by him may be considered, if the proceedings conclude in his favour. In determining the amount or costs to be so reimbursed, the Government will consider how far the court has vindicated the acts of the Railway servant. The conclusion of the proceedings in favour of the Railway servant will not by itself justify reimbursement.**

- iv. To enable the Railway servant to meet the expenses of his defence, the Government may sanction, at its discretion, an interest free advance not exceeding Rs.500/- or his substantive pay for three months whichever is greater after obtaining from him a bond in the form given below.

B O N D

BY THIS BOND I (name and other particulars of Railway servant including the post held to be given.) having taken an advance of Rs (Rupees only) from the President of India (hereinafter called the "Government") promise to pay to the Government the said sum of Rs in (mention the number) equal monthly instalments of Rupees payable by 10th of every month commencing from (mention the date of commencement of the first instalment.)

2. AND I agree that in case I cease to be in Government service for any reason whatsoever, the entire balance of the amount shall become at once due and payable and that in case I fail to pay the same before the date of expiry of six months from the date on which the payment of last instalment under this bond would have become due but for my ceasing to be in Government service, whichever date is earlier, the Government without prejudice to any other right to which it shall be entitled under any law for the time being in force, shall recover the entire balance of the amount from me.

Dated this day of 19

(Signature of Govt. servant)

Witnesses to signature

1.

2.

Accepted

.....

(Signature)

.....

**(Designation)

(To be accepted by the officer who is authorised to execute the bond).

The recovery of the advance may be made in not more than twenty-four equal monthly instalments, the exact number of instalment being determined by the sanctioning authority, provided the advance is recovered before the date of retirement. The recovery of the advance should commence on the first issue of pay/ leave salary/ subsistence allowance following the month in which the advance is drawn and should continue till the entire advance is repaid. At the time of reimbursement of legal expenses, the entire balance of advance outstanding against the Railway servant should be recovered from the amount that is being reimbursed to him. If the amount of

reimbursement is less than the balance of advance outstanding against the Railway servant the amount remaining after adjustment, should be recovered in instalments as already fixed.

- c. No second advance will be admissible in respect of the same proceedings. There is, however, no objection to the grant of more than one advance, if they relate to different proceedings against a Railway servant.

(Ref. [Rule 702\(1\)](#) (c) of the Indian Railway Establishment Code Vol.I - 1985 Edition).

- d. Advance may be sanctioned to a temporary Railway servant on his furnishing a surety of a permanent railway servant of equivalent or higher status not governed by the Payment of Wages Act. The form of surety is given as Annexure 'C' to Board's letter No. [E\(G\)63 LL 2-49 dated 22.10.1964](#).

(Ref: [Rule 702\(1\)](#) of the Indian Railway Establishment Code Vol.I - 1985 Edition).

4. Proceedings initiated against a Railway servant by Government:

A Railway servant involved in any legal proceedings, either Civil or Criminal, a result of suit instituted against him by the State in respect of matters arising out of or connected with his official duties or his official position will not be eligible for assistance from the Government for his defence. If, however, the proceedings conclude in his favour, his claim for reimbursement will be considered by the Government, if it is satisfied from the facts and circumstances of the case, that the Railway servant was subjected to the strain of the proceedings without proper justification. While considering the claim, the Govt. will decide the extent of reimbursement i.e. whether the whole or a reasonable proportion of the expenses incurred by the Railway servant for his defence should be reimbursed.

(Ref: [Rule 702\(2\)](#) of the Indian Railway Establishment Code Vol.I - 1985 Edition).

5. Proceedings initiated by a Railway servant on his being required by the Govt. to vindicate his official conduct:

A Railway servant may be required by the Govt. to vindicate his conduct in a Court of Law, when specific allegations are made in the Press against him as an individual Public officer. In such cases, the question of reimbursement of costs incurred by the Railway servant and the extent of reimbursement will be considered by the Govt. in the light of the result of the proceedings. The Railway servant may, however, avail of an interest free advance not exceeding Rs. 500/- or his substantive pay for three months, whichever is greater in each case on executing a bond as given in para 3(b) (iv) above. While considering the question of reimbursement, the Govt. will take into account the extent to which the Court has vindicated the acts of the Railway servant in the proceedings. Conclusion of the proceedings in favour of the Railway servant will not by itself justify the reimbursement.

(Ref: [Rule 702](#) (3) of the Indian Railway Establishment Code Vol.I - 1985 Edition).

6. Proceedings instituted by a Railway servant with the previous sanction of the Govt. to vindicate his conduct arising out of or connected with his official duties or position.

In a case, where a Railway servant resorts to a Court of Law with the previous sanction of the Govt. to vindicate his conduct arising out of or connected with his official position or duties, though not required to do so by the Govt., assistance towards reimbursement of the costs of defence will not be ordinarily admissible even if the Railway servant succeeds in the proceedings. In deserving cases the Govt. may sanction interest free advance in the manner mentioned in para 5 above.

(Ref: [Rule 702\(4\)](#) of the Indian Railway Establishment Code Vol.I-1985 Edition).

7. Proceedings instituted against a Railway servant by another Railway servant in respect of matters connected with the former's official position or duties:

On the basis of facts and circumstances of the case where it is considered that it would be in public interest to defend a Railway servant in a case filed against him by another Railway servant in respect of matters connected with the former's official duties or position, the latter Railway servant who has filed the case would be treated as a private party and assistance/ reimbursement of costs will be given to the defending Railway servant as explained in para 3(b). Assistance will not, however, be admissible in cases in which Railway servant has been impleaded as a co-respondent by other Railway servant in suits against the Government on service matters such as seniority etc.

(Ref: Board's letter No. [E\(G\)78 LL 1-6 dated 27.12.1978.](#))

8. Where Law suits or criminal charges are brought against Railway servants arising out of circumstances connected with their duty, the General Manager is empowered to arrange for their defence by employing such legal assistance as may be considered necessary. Where the charges in any particular case are expected to exceed Rs.10,000/- prior sanction of the President should be obtained to the expenditure being incurred. Any costs awarded by the Court to the Railway cannot be set off against the expenditure for the purpose of the limit prescribed.

(Rule [702\(7\)\(ii\)](#) of the Indian Rly Establishment Code Vol. I-1985)

9. General:

- i. Claims from the Railway servants for reimbursement should be filed immediately after the proceedings have been concluded in their favour finally and all cases for reimbursement should be referred by the Railways to the Railway Board, supported by the necessary documents within a maximum period of six months. The documents to accompany the proposal are -**
 - a. Copies of Court Judgments;**
 - b. Copies of order sheets of all the Courts, which heard the case;**
 - c. Stamped receipts of Lawyer's fees;**

- d. Copy of Law officer's recommendations; indicating clearly the amount considered reasonable for reimbursement on each item and the reasons for the recommendation, together with a brief note on the merits of the case;
- e. Claims submitted by the Railway servant for reimbursement in original.
- f. Views of the FA&CAO and the recommendation of the General Manager, and
- g. Any other document connected with the case such as Charge report etc.

(Ref: Board's letter No. [E\(G\)60 LL 1-27 dated 09.01.1961](#) and [E\(G\)60 LL 1-27 dated 12/13.03.1962](#))

- ii. Consultation with the Union Public Service Commission is necessary in respect of cases falling under Para 2(i) under Article 320(3)(d) of the Constitution of any claim for reimbursement of costs incurred by the Railway servant in his defence of the legal proceedings instituted against him for acts done or purported to be done by him in the execution of his official duty. The proposal should, therefore, be accompanied by information in the proforma prescribed by the UPSC duly signed by the competent authority. In other cases, consultation with the Union Public Service Commission is not obligatory, but it will be open to the Government to seek the Commission's advice, if considered necessary.

(Ref: Board's letters No. [E\(G\)59 LL 2/5 dated 21.07.1960](#) and [E\(G\)73 LL 1-13 dated 16.01.1974](#)).

- iii. The question whether a case falls under Article 320(3)(d) of the constitution so as to require consultation with the Union Public Service Commission may, at times be difficult to decide. It may be stated generally that consultation is obligatory in a case where a reasonable connection exists between the act of the Railway servant and the discharge of his official duties. The action of the Railway servant must bear such relation his official duties that he could lay a reasonable claim but not a pretended or a fanciful claim that he did it in the course of his official duties.

(Ref: Bd's letter No. [E\(G\)59 LL 2/5 dated 21.07.1960](#)).

- iv. Where a Railway servant conducts his own defence in a law suit arising out of circumstances connected with the performance of his official duties or position and claims reimbursement of the costs, the reasonableness of the amount to be reimbursed will be determined on a number of consideration and the merits of the case, in consultation with the Ministry of Law/ UPSC, wherever necessary. Claim for reimbursement is not a legal right of the Railway servant and no appeal lies against the decision of the Government. The Railways should not, therefore, forward any appeal against the decision of the Govt. on reimbursement, unless a substantial point, having a bearing on the decision of the Govt., which had not been brought out in the proposal earlier, has been made out in the appeal.

(Ref: Bd's letter No. [E\(G\)68 LL 1-1 dated 05.03.1968](#)).

- v. Normally reimbursement of fees of only one Counsel will be considered. The fees should comprise professional charges only excluding other charges such as travelling allowance.

(Ref: [Rule 701\(3\)](#) of the IRCE - Vol. I 1985 Edition.)

9 (A) Retired Govt. Servants involved in legal Proceedings - Provision of legal and financial assistance.

The following may be added as para 9(A).

If the government, on consideration of the facts and circumstance of the case consider that it will be in the public interest that Government should themselves undertake the defence of the retired Railway servants in such proceedings and if retired Railway servant agree to such a case, the retired Railway Servant should be required to make the statement in writing as Annexure 'A' below and thereafter government should make arrangement for the conduct of the proceedings as if the proceedings had been instituted against government.

If the retired railway servant proposed to conduct his defence, in such proceedings the Railway servants, the question of re-imburement of reasonable cost incurred by him for his defence may be considered in case the proceedings were in his favour. In determining the amount of cost to be so reimbursed government will consider how far the Court has vindicated the act of the retired railway servant. The conclusion of the proceedings in favour of the retired railway servant will not by itself justify reimbursement. To enable the retired railway servant to meet the expense of his defence, Government may sanction at their discretion an interest free advance not exceeding Rs. 500/- after obtaining a bond from the retired Government servants as per Annexure 'B' below.

(Ref: Board's letter No. [E\(G\)77 LL 1-3 dated 12.05.1977](#)).

ANNEXURE - A

(Here enter description of the proceedings)

The Government of India having been pleased to undertake my defence in the above proceedings, I hereby agree to render such assistance to Government as may be required for my defence and further agree that I shall not hold Government in any way responsible if the proceedings end in decision adverse to me.

Signature of the retired Government Servant.

Date

ANNEXURE-B

BY THIS BOND I*..... a retired Government servant at present residing at having taken an advance of Rs (Rupees only) from the President of India (hereinafter called the "Government") promise and undertake to refund and pay to the Government the said sum of Rs in % equal monthly instalment of Rs payable by the 10th of every month commencing from @.....

2. AND I agree that in case I fail to pay any of the above mentioned instalment on due date, the entire balance of the amount then remaining due shall at once become due and payable by me to the Government and if I fail to pay the same within six months from the date on which the balance of the amount thus becomes due for payment, the Government shall have the right to recover the same from me by due process of Law.

Dated this day of 199.

(Signature of the retired Government servant)

Witnesses to signature

1.....

2.....

Accepted

(Signature)

**** (Designation)**

for and on behalf of the President of India.

*** Here give the name and other particulars of retired Government servant including the post held by him before retirement.**

% Here mention the number of instalments.

@ Here mention the date of commencement of the first instalment.

**** Here mention the designation of the officer who is authorised to execute the bond under Article 299(1) of the Constitution.**

10.

- i. While referring to this master circular the original letters/ references mentioned herein should be read for a proper appreciation. The master**

circular is only a consolidation of the existing instructions and should not be treated as a substitution to the original circulars. In case of doubt , the original instruction should be relied upon as authority;

- ii. The instructions contained in the original circular referred to have only prospective effect from the date of their issue, unless indicated otherwise;
- iii. If any circular on the subject which has not been superseded has been lost sight of in the preparation of the master circular, the said circular which has been missed through oversight, should not be ignored, but should be treated as valid and operative.

11. The letters/references on the basis of which the master circular has been prepared are indicated in the Annexure.

ANNEXURE

List of original orders/circulars from which consolidation has been made

1. [Rule 701\(1\) to \(4\), 702 \(1\) to 702 \(5\), 702 \(7\) \(ii\) of the Indian Railway Establishment Code, Vol. I 1985 Edition](#)
2. [E\(G\)59 LL 2/5 dated 21.07.1960](#)
3. [E\(G\)60 LL 1-27 dated 09.01.1961](#)
4. [E\(G\)60 LL 1-27 dated 12.03.1962](#)
5. [E\(G\)63 LL 2-49 dated 22.10.1964](#)
6. [E\(G\)68 LL 1-1 dated 05.03.1968](#)
7. [E\(G\)73 LL 1-13 dated 16.01.1974](#)
8. [E\(G\)77 LL 1-3 dated 12.05.1977](#)
9. [E\(G\)78 LL 1-6 dated 27.12.1978.](#)