

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
RAILWAY BOARD

No. E(G)2021/LL-3/1

New Delhi, dated: 4.02.2022

The General Managers (P),
All Indian Railways Including
Production Units and
The Director General, RDSO, Lucknow.

Sub: Proposal for filing application for SLP (Special Leave to Appeal) to the Supreme Court.

Reference is invited to Board's letter No. E(G)72 LL2-76 dated 22.11.1972 (copy enclosed) vide which the Railways were advised to adopt the procedure for filing application for Special Leave to appeal to the Supreme Court etc.

2. Recently, instances have come to the notice of the Railway Board wherein, Hon'ble Supreme Court has passed strict order/judgement, fixing the responsibilities of the officers responsible for delay in processing of the case which leads to further delay in the filing of SLP before the Apex Court. This has been viewed seriously by the Board.

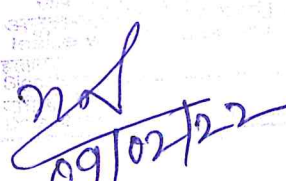
3. In view of the above, Railways are requested that the instructions contained in the letter dated 22.11.1972 may be followed scrupulously and it may be ensured that no laxity is shown in such matters.

Please acknowledge receipt.

DA: As above


4/2/22
(ANITA GAUTAM)
Executive Director Estt. (General)
Railway Board

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Government of India (Bharat Sarkar)
Ministry of Railways (Rail Mantralaya)
(Railway Board)

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No.E(G)72LL2-76

New Delhi, dated the 22nd November 1972

The General Managers,
All Indian Railways
including CLW, DLW & ICF

The Director General,
R.D.S.O.,
Lucknow

Sub:-Procedure for filing application for
special leave to appeal to the Supreme
Court etc.

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In Railway Board's letter No.E(G)69LL2-31 dated the 21st June 1969, the procedure for filing application for special leave to appeal to the Supreme Court was detailed but it would appear that these instructions are not sufficient. In supersession, therefore, of that letter, the entire procedure relating to appeals to the Supreme Court is explained as follows :

2. Appeals to the Supreme Court fall mainly under the following categories, namely -

- (i) Where a certificate for leave to appeal from the High Court is necessary for appeal to the Supreme Court;
- (ii) Where on refusal of certificate for leave to appeal the Supreme Court is to be moved directly for special leave to appeal under Article 136(1) of the Constitution; and
- (iii) Where the Supreme Court is moved for special leave to appeal in any other case.

3. Regarding (i): In these cases, the period of limitation prescribed under Article 132 of the Limitation Act, 1963 for an application is 60 days from the date of the decree, order or sentence. In computing the period of limitation, the Railway will be entitled by virtue of Section 12 of the Limitation Act, 1963 to exclude the day on which the judgment complained is pronounced and the time requisite for obtaining a certified copy of the judgment. In effect, therefore, the period available for a proper study of the judgment may come to more than 60 days where, under the rules

of the High Court, the Railway is entitled to a free copy of the judgment on request made to the High Court. However, the Railway should invariably apply for a certified copy immediately after the judgment complained is pronounced and also take delivery of the certified copy as and when it is made ready for delivery by the Court. This is really important as time requisite would be over and limitation would begin to run when certified copy is ready for delivery.

4. Regarding (ii) : Under Article 133(b) of the Limitation Act, 1963, the period of limitation to move the Supreme Court for special leave under Article 136 of the Constitution is 60 days from the date of the order of refusal. Where in a case, leave/certificate is refused, it shall not be necessary to file the order refusing the certificate. But the petition for special leave shall be accompanied by an affidavit stating the date of the judgment sought to be appealed from date on which the application for a certificate of fitness to appeal to the Supreme Court was made to the High Court the date of the order refusing the certificate and the ground or grounds on which the certificate was refused and in particular whether the application for the certificate was dismissed as being out of time. It is therefore clear that in cases coming under this category, the Railway Administration cannot claim the benefit of excluding the time requisite for obtaining the order refusing the certificate as it is not necessary to file the order refusing the certificate alongwith the petition of special leave. However, in calculating the period of 60 days, the date on which the order refusing leave is passed can be excluded but the last day is to be included.

5. Regarding (iii) : Under this category falls two types of cases :

(a) cases where the Supreme Court can be approached direct for special leave to appeal against any judgment or order of any Court or Tribunal under Article 136 of the Constitution; and

(b) cases where the judgment is of a single Judge of a High Court in the exercise of second appellate jurisdiction and there is provision for Letters Patent Appeal from the judgment of the Single Judge.

Type (a) - Under Article 133(c) of the Limitation Act, 1963, the period of limitation prescribed for a special leave application is ninety days from the date of the judgment or order. In these cases also, the Railway can claim the benefit of excluding the date on which the judgment/order complained is pronounced and the time requisite for obtaining a certified copy of the judgment/order complained. In effect, in these cases also the time available to consider the merits of the

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order/judgment for appeal may come to more than ninety days if under the rules of the Court or Tribunal the Railway is entitled to a free copy of the judgment on request made to the Court or Tribunal. However, the Railway should invariably apply for a certified copy immediately after the judgment/order complained is pronounced and also take delivery of the certified copy as and when it is made ready for delivery by the Court or Tribunal as otherwise time requisite would be over and limitation would begin to run when certified copy is ready for delivery.

Type (b) - In these cases, the Railway cannot approach the Supreme Court directly against the second appellate judgment of a single Judge. The Railway will have to move the Single Judge of the High Court for grant of a declaration that the case is a fit one for further appeal to the High Court. If the Single Judge refuses to certify the case as a fit one for further appeal to the High Court, the time taken in making the necessary application before the Single Judge and the refusal thereof is excluded in counting the period of 90 days in coming to the Supreme Court by way of special leave under Article 136 of the Constitution.

6. There are already instructions according to which sanction of the Board is necessary before any appeal is filed in the Supreme Court. Instances have come to the notice of the Board where applications for leave to appeal are filed in the High Court without reference to the Board and then matters are referred to the Board for ex-post-facto sanctions. It is impressed upon the Railways that sanction of the Board should invariably be obtained in advance. If exceptions are to be made, clear and specific grounds will have to be alleged as to why in a particular case it has not been possible to obtain sanction in advance.

7. Instances have also come to the notice of the Board where sanction given by the Board to move the High Court for leave to appeal has been taken to cover application for special leave in the event of the High Court refusing to give leave. It is clarified that the approval of the Board is necessary for filing an application for special leave in the Supreme Court under Article 136 of the Constitution even though the Board may have earlier accorded their sanction to a Railway for approaching the High Court for leave to appeal to the Supreme Court. Opinion of one of the Senior Law Officers to the Government of India (Attorney General/Solicitor General/Additional Solicitor General) is taken at this stage so that the Supreme Court is not moved by way of special leave as a matter of course in every case where leave certificate is refused by the High Court.

8. In this connection, it is stressed that it would be necessary that the staff dealing with Court cases should be fully conversant with the rules on the subject so that all formalities are finalised and the sanction of the Board is invariably obtained well within the periods of limitation prescribed under law. It is also stressed that the papers sent to the Board for obtaining their sanction should be accompanied by a copy of the judgment of the High Court alongwith the opinion of the counsel, who conducted the case before the High Court on the merits of our contentions. Where leave to appeal is refused by the High Court and the Railways approach the Board for sanction to file special leave petition to the Supreme Court under Article 136 of the Constitution, the Railway must ensure that opinion of the counsel who conducted the case before the High Court is enclosed as part of the records sent to the Railway Board so that the opinion of the counsel on the merits of the proposed appeal to the Supreme Court is readily available when the papers are placed before the Senior Law Officer to the Government of India.

9. The Board consider that the periods prescribed under the law are adequate in each case to obtain the approval of the Board and take further necessary action if the Railways keep a watch on the cases from the dates of decision of the High Court and process the cases expeditiously so that they are able to file a petition in the High Court or the Supreme Court, as the case may be, within the prescribed periods of limitation.

10. The Law Officer should invariably be consulted where there is any difficulty in processing the case as per the instructions contained herein.

11. The receipt of the letter may be acknowledged.

R.D. Lakhanpal

(R.D. Lakhanpal)

Assistant Director Establishment
Railway Board

No.E(G)72LL2-76 New Delhi, dated the 22nd November 1972

Copy forwarded for information to :

The Chairman,
Railway Service Commission,
Allahabad/Bombay/Calcutta/Madras

The Secretary,
Railway Rates Tribunal,
Madras

The Deputy Director,
Rail Movements,
Calcutta/Moghalsarai

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The Principal,
Railway Staff College,
Baroda

The Principal,
Advanced Permanent Way
Training School,
Poona

The Principal,
Institute of S & T,
Secunderabad

The General Secretary,
I.R.C.A.,
New Delhi

The R.L.O.,
New Delhi

The Metropolitan Transport Project,
Delhi/Bombay/Calcutta/Madras

R.D. Lakhanpal

(R.D. Lakhanpal)
Assistant Director Establishment
Railway Board

Copy to :-

ERB I, II, E(NG)I, II & III, E(P&A)I, II and
E(O)I, II and III Branches of Board's office.

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