RBE No. 151/2019

भारत सरकार (GOVERNMENT OF INDIA)
रेल मंत्रालय (MINISTRY OF RAILWAYS)
रेलवे बोर्ड (RAILWAY BOARD)
*****

No. E(W)2017/ISM/10 New Delhi, Dated 16.09.2019

The General Manager,
Zonal Railways & PUs.

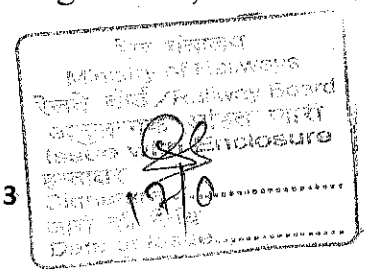
Sub: Engagement of Consultants (Contractual) in the dispensaries functioning under 'Staff Benefit Fund'(SBF) scheme.

Ref: Board's letters Nos. (i) E(W)2003/WE-1/3 dt. 02.07.2003;
(ii) E(W)2013/ISM/1 dt. 23.07.2014 & 18.05.2015;
(iii) E(W)2000/WE-1/3(Vol. II) dt. 24.08.2016
(iv) E(W)2016/ISM/3 dt. 29.04.2016, 14.08.2018 & 21.01.2019;
(v) E(W)2019/ISM/4 dt. 23.08.2019

Attention is drawn to Railway Board's referred instructions on the subject of engagement (on contract basis) of Consultants in Homeopathic, Ayurvedic & AYUSH etc. dispensaries run by the SBF committees by using per-capita SBF grant given vide SN-11 of para 1 of Railway Board's letter No E(W)2014/FU-1/1 dated 30.07.2014 under the head "Indigenous System of Medicine including Homoeopathy" (ISM, for short).

2. Of late, it is being observed that a number of such Consultants (hired by SBF committees on Contract basis) are in the habit of sending representations (either individually or through their registered/un-registered Associations) for their regularization/absorption in permanent government jobs in Indian Railways. Moreover, they have also been representing for giving them other facilities at par with regular Railway Servants. In the past, they have even filed court cases demanding regularization of their service as regular Railway servants.

3. In this connection, attention is drawn to High Court Allahabad's orders dated 4.4.2016 *(WP No. 55109 of 2004)* dismissing the demand of petitioners (i.e. such Consultants through their Association) for their regularization etc. These orders of High Court have already been circulated, for guidance, vide Board's letter No. E(W)2000/WE-1/3(Vol.II) dated 24.8.2016.



4. The petitioners had also gone ~~went~~ in appeal *["Sanjay Kumar Singh and anr. Vs. Union of India and Others", i.e. Civil Appeal No. 9957/2017 arising out of SLP(C) No. 19693 of 2017 @ CC No. 7110 of 2017]* before Apex Court against aforesaid orders of High Court. Hon'ble Supreme Court considered the appeal and passed orders dated 31.07.2017 directing the Ministry of Railways to take a considerate decision on the representations of petitioners (i.e. contractually-engaged SBF consultants through their Associations). These representations were disposed of by way of a comprehensive Speaking Order dated 28.06.2018, passed by the Member Staff (Railway Board), rejecting their claim for regularization on Railways. These Speaking Orders were conveyed to the three petitioners (i.e. two Associations and one individual petitioner) vide Railway Board's letter No. E(W) 2017/ISM/10 dated 28.06.2018.

5. However, in view of the fact that these petitioners had already filed contempt petitions before Apex court, therefore, the aforementioned Speaking Order dated 28.06.2018 came to be duly perused by the Hon'ble Supreme Court in the contempt proceedings. After perusal of the Speaking Order, three Contempt (Civil) petitions *(viz. Nos. 1026 of 2018; 1085 of 2018, 1502 of 2018 in Civil Appeal No. 9957 of 2017)* were dismissed by the Apex Court on 24.08.2018. Therefore, the issue has reached finality as far as their claim for regularization in permanent regular job is concerned.

6. In this connection, it is reiterated that these dispensaries (8-hourly/4-hourly) have been running as a measure of staff welfare under SBF's ISM head. These facilities have been provided in addition to Railways' regular health-care system comprising a large network of Railway Hospitals and Health Units providing medi-care in modern system of medicine (Allopathic). Over and above, these consultants are engaged, on contract-basis, by the SBF Committees (i.e. not by the Railways) on SBF Committees` terms and conditions on fixed monthly honorarium (i.e. not on salary basis) for one year at a time, subject to review at the end of the initial/renewed contractual term.

7. Therefore, these contractually-appointed consultants have no legal right to get regularized in Government's regular posts in view of the aforementioned judgments as well as in view of Apex court's Constitutional Bench's unambiguous judgment dated 10.04.2006 in famous case of *"State of Karnataka vs Uma Devi" (Civil Appeal No.3595-3612/1999)*. It was circulated by Railway Board vide letter No.E(LL)2006/AT/NRE/1 dt. 23.6.2006. It was also circulated by the Ministry of Personnel, Public Grievances and Pensions' OM No.49019/1/2006-Estt. dated 11.12.2006. Apex court's germane observation as given in para 34 of the aforementioned judgment are quoted for ready reference:-

> *"**Thus it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution**, a Court would certainly be disabled from passing an order upholding a violation of Article*

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14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution.

Therefore consistent with the scheme for public employment this Court while laying down the law, has necessarily to hold that ***unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.***

If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis the same would come to an end when it is discontinued. *Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment.*

It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules."

(emphasis supplied)

8. In view of aforesaid, Railways while engaging such Consultants must ensure following steps:-

(i) Consultants should be made aware in writing that they are not being engaged against a regular civil post of the Government, rather the job of consultant is purely on contractual basis.

(ii) Their particular attention should also be drawn to this letter as well as guidelines given in the Railway Board's referred letter dated 02.07.2003 in the "Offer for engagement on Contract Basis".

(iii) The "Offer for engagement on Contract Basis" should be signed on behalf of SBF committee and not on behalf of GM/DRM etc

Board desires strict compliance of these instructions.

रेल मंत्रालय
Ministry of Railways
रेलवे बोर्ड/Railway Board
अनुलग्नक सहित जारी
Issue with Enclosure
हस्ताक्षर
Signature.....
जारी की तिथि
Date of issue.....

(D.V. Rao)
Director Estt.(W)
Railway Board

P/Issue 27/6/09/19