
Law Office of :

NAVDEEP SINGH

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Phones : 099888-LEGAL, 093161-32817 Email : navdeepsingh . india @ gmail . com

Your reference :

Our reference :

Sh Nitin Gadkari

Minister of Road Transport & Highways

Transport Bhawan

1, Parliament Street, New Delhi- 110 001

21 Oct 2014

**ERRONEOUS OFFICE MEMORANDUM DATED 17 JUNE 2014 ISSUED BY THE
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS BASED ON FACTUALLY AND
LEGALLY INCORRECT LEGAL ADVICE TENDERED BY AN ASSISTANT LEGAL
ADVISER OF THE MINISTRY OF LAW AND JUSTICE RESULTING IN
WITHDRAWAL OF TOLL-TAX EXEMPTION FROM SERVING DEFENCE
PERSONNEL**

Dear Minister,

1. The current Government is known to be inclined towards the betterment of the armed forces and looking after their needs and requirements. It is indeed satisfying that the Prime Minister has made his sensitivity known publicly towards the issues related to the men and women in uniform.
2. Unknown to you however, your Ministry has recently issued a letter (OM No H-24030/32/2014-(Toll) dated 17 June 2014) in the garb of a clarification under the RTI Act whereby an attempt has been made to nullify and withdraw the exemption from toll tax available to 'on duty' and 'off duty' serving personnel of the defence services under the provisions of the Indian Tolls (Army & Air Force) Act, 1901 and various notifications and letters/OM issued on the subject from time to time and also decisions of Hon'ble Constitutional Courts.
3. What is more surprising is that the letter has been issued on the basis of an incorrect and patently wrong legal advice by a junior level staffer of the Department of Legal Affairs of the Ministry of Law & Justice (MoLJ) whereas the same aspect had been clarified and approved at Secretary level of both your Ministry as well as MoLJ in the past. It is also not understood as to how an attempt could be made to nullify an existing dispensation and that too in an ambiguous manner by way of a letter dealing with an RTI query.
4. A detailed letter on the subject highlighting the correct legal position under law addressed by the undersigned to the Secretary of your Ministry as well as Secretary Department of Legal Affairs, MoLJ is enclosed herewith for your immediate necessary action.
5. Needless to state, it is requested that OM dated 17 June 2014 may be immediately withdrawn since the same is not only based on incorrect legal and factual appreciation of the Indian Tolls (Army & Air) Force Act, 1901, but is also in direct contravention of the notifications, letters and clarifications issued by the MoRTH in conjunction with MoLJ and law as affirmed by the Hon'ble Supreme Court of India. Toll exemption to defence personnel is available not by way of benevolence or a welfare measure but flows from a legislative Act which in turn was incepted to cater to the frequent movement of members of the forces and their families all over the country. It is also sincerely hoped that your officers keep the Minister in loop in the future before issuing any such letter which may have the effect of negatively altering public policy or the morale of the armed forces.

Thanking You

Navdeep Singh
Advocate, High Court

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NAVDEEP SINGH

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Your reference :

Our reference :

To:

Secretary

Ministry of Road Transport & Highways

Transport Bhawan

1, Parliament Street

New Delhi- 110 001

Secretary

Department of Legal Affairs

Ministry of Law & Justice

Shastri Bhawan

New Delhi- 110 001

21 Oct 2014

**ERRONEOUS OFFICE MEMORANDUM DATED 17 JUNE 2014 ISSUED BY THE
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS BASED ON FACTUALLY AND
LEGALLY INCORRECT LEGAL ADVICE TENDERED BY AN ASSISTANT LEGAL
ADVISER OF THE MINISTRY OF LAW AND JUSTICE RESULTING IN
WITHDRAWAL OF TOLL-TAX EXEMPTION FROM SERVING DEFENCE
PERSONNEL**

1. This has reference to OM No H-24030/32/2014-(Toll) dated 17 June 2014 issued by the Ministry of Road Transport & Highways (MoRTH) based on Legal Advice No FTS-48/JS&LA(SKM)/2014 dated 06 June 2014 tendered by an Assistant Legal Adviser of the Department of Legal Affairs (DoLA), Ministry of Law & Justice (MoLJ) vide which a clarification has been issued ostensibly in the garb of some reply to an RTI query vide which it has been stated in a roundabout manner that personnel of the defence services are not entitled to toll exemption when not 'on duty'.

2. Before touching upon the merits of the legal advice by the Assistant Legal Adviser of the DoLA/MoLJ, it would be worthwhile to mention here that the ibid matter based on the provisions of the Indian Tolls (Army & Air Force) Act, 1901, has been fully deliberated upon earlier by the MoRTH at the highest level in conjunction with the MoLJ and has also been a matter of litigation which went till the Hon'ble Supreme Court. However, the entire earlier correct legislative, legal and judicial position has been attempted to be negated by the issuance of the ibid OM dated 17 June 2014. Before proceeding further, the provisions of MoRTH Letter No NH-12037/278/2003/PB/NH-1 dated 12 November 2003 (**See Appendix A**) are brought to your notice, the relevant extract of which is quoted below:-

*“Ministry of Law and Justice have indicated that Indian Tolls (Army and Air Force) Act 1901 is a special Act which over-rides general acts such as National Highways Act, 1956 **and private vehicles of the officers, soldiers and airmen of regular forces are exempted from paying toll irrespective of whether they are on duty or not.**”*

3. The above correct legal position was also amplified vide MoRTH Letter No NH-11065/12/2003-P&M dated 15 Sept 04 to National Highways Authority of India (NHAI) vide paragraph 1 of which it was clearly stated that private vehicles of defence personnel shall be exempted. The subject line of the letter also shows that all categories of exemption under Section 3 of the Indian Tolls (Army & Air Force) Act, 1901, would fall under the definition of 'defence vehicles' which is an exemption term usually used on National Highways.

4. However, the latest MoRTH OM dated 17 June 2014 (**See Appendix B**) has been issued on the basis of advice tendered by a Assistant Legal Adviser of DoLA/MoLJ (**See Appendix C**). In Para (c) of the legal advice rendered by the Assistant Legal Adviser in which Sections 3(b) and 3(c) of the Act are taken note of, **it is stated by him that “the main focus in Sections 3(b) and (c) is on the word ‘Duty’ ”**. Moreover, in Para (b) of the said legal advice, it is stated that Sections 3(g) and 3(h) of the Act indicate the usage of private vehicles for official purposes or duty only. Unfortunately, the appreciation of the Assistant Legal Adviser is not only legally, but also factually wrong and falls foul of even a literal interpretation of the Act and its provisions, and also of earlier clarifications issued by the Ministry of Law & Justice and the MoRTH which have been affirmed even by the Highest Court of the land.

5. A bare perusal of Section 3 of the Act (**See Appendix D**) would show that the 'On Duty' proviso is only applicable to personnel of the Territorial Army (TA) and the National Cadet Corps (NCC) and those of the Indian Reserve Forces under Sections 3 (b) and 3 (c) and not to personnel of the Regular Army under Section 3(a). In this context, your attention is invited to Section 3(a) of the Act which provides toll exemption to all officers, soldiers and airmen of the Regular Forces (**without** the requirement of being 'On Duty') whereas Sections 3 (b) and 3 (c) provide toll exemption to TA and NCC personnel and those of the Indian Reserve Forces when on duty or proceeding to or returning from duty/service/training etc. **It is bewildering to observe that the Assistant Legal Adviser has taken note of Sections 3(b) and 3(c) in his advice but has omitted to make any reference at all to Section 3(a) which is the actual provision dealing with the Regular Forces.** The Assistant Legal Adviser has also commented upon Sections 3(g) and 3(h) but has conveniently overlooked the fact that Sections 3(g), 3(h) and 3(i) operate in different fields. While Section 3(g) exempts all carriages accompanying exempted personnel without there being any requirement of belonging to the Government, Section 3(h) deals with carriages belonging to the Government while 3(i) deals with carriages employed in the service of the Government. The Assistant Legal Adviser has mixed up and confused the provisions of all the three different and separate sections. The provisions of Section 3 are tabulated below for an easier understanding:

<u>Section of the Indian Tolls (Army & Air Force) Act, 1901</u>	<u>Categories to which applicable</u>
Section 3 (a) (i)	Applicable to Regular Forces (without the requirement of being “on duty”)
Section 3 (b)	Applicable to Territorial Army and NCC personnel but only when on duty
Section 3 (c)	Applicable to personnel of the Indian Reserve Forces but only when called out for training/service etc
Section 3 (g)	Applicable to Carriages accompanying exempted personnel (without the requirement of belonging to the Govt or being employed in military service)
Section 3 (h)	Applicable to Carriages belonging to the Govt etc
Section 3 (i)	Applicable to carriages moving under military orders or employed in military service

6. It is also a matter of deep concern that the issue had earlier been examined by the Ministry of Law & Justice with file notings that were approved by the Secretary of the Department but still the Assistant Legal Adviser has opted to render a diametrically opposite opinion and that too after surprisingly endorsing in Para (a) of his advice that the earlier opinion was correct. It is a cause of greater concern that the file while moving upwards has not been apparently examined in light of the substantive law, that is, the Act itself and it has not even been appreciated by any senior authority in the Law Ministry or the MoRTH that the entire legal advice does not even refer to Section 3(a) of the Act which forms the bedrock of exemption to serving personnel of the regular forces.

7. It is also brought to your knowledge that provisions of Toll exemption and exemption to 'off duty' and 'on duty' defence personnel were challenged before the Hon'ble Punjab & Haryana High Court in Civil Writ Petition No 8508 of 2006. The Petition was however dismissed by a Division Bench of the Hon'ble High Court which held that the Act itself provided for concessions to defence personnel. **The order of the Hon'ble High Court in the Hon'ble Supreme Court by way of Special Leave Petition 15419 of 2006 however the order of the Hon'ble High Court and toll exemption to "on duty" and "off duty" personnel of regular forces was affirmed by the Hon'ble Supreme Court.**

8. It must also be placed on record that such issues which affect the morale of the rank and file of the Armed Forces should not be dealt with in a cavalier manner and neither should Govt policy be allowed to be so fickle so as to change with the personal opinions of officers that too by overriding earlier letters, opinions, notifications, judgements of Constitutional Courts and even substantive legislative provisions. In fact it surpasses logic as to how could OM dated 17 June 2014 be issued ostensibly in the garb of a clarification under the RTI Act which has had the effect of overriding the earlier legal position solidified by letters and notifications which still have the authority of law and which derive their force from a substantive provision of law which has not been amended?

9. In view of the above, you are requested to kindly withdraw the legal advice rendered by the concerned Assistant Legal Adviser and also the OM dated 17 June 2014 immediately since the same is not only based on incorrect legal and factual appreciation of the Indian Tolls (Army & Air) Force Act, 1901, but is also in direct contravention of the notifications, letters and clarifications issued by the MoRTH in conjunction with MoLJ and law as affirmed by the Hon'ble Supreme Court of India. It is also requested that meticulous perusal may be initiated in a democratic manner at the highest level before issuing such letters which may result in altering existing Government policy and may have a large impact on the rights, benefits and privileges of a particular section of the society.

Thanking You

Navdeep Singh
Advocate, High Court

Enclosures:
Appendices A to D

Copy for information and necessary action to:

Chief of the Army Staff
COAS Secretariat
South Block, New Delhi – 110 011

Chief of the Air Staff
CAS Secretariat
South Block, New Delhi- 110 011

Chief of the Naval Staff
CNS Secretariat
South Block, New Delhi- 110 011

GOC-in-C
HQ Western Command
Chandimandir, Distt Panchkula, Haryana

Defence Secretary
Ministry of Defence
South Block, New Delhi- 110 011

Joint Secretary & Legal Adviser
Department of Legal Affairs (in charge Advice A Section)
Ministry of Law and Justice
Shastri Bhawan, New Delhi- 110 001

Sh NK Sharma
Director (Toll), Transport Bhawan
Ministry of Road Transport & Highways
T1, Parliament Street, New Delhi- 110 001

Chairman NHAI
G 5&6, Sector-10,
Dwarka, New Delhi - 110 075

Quarter Master General (QMG)
QMG's Branch, Army HQ
Sena Bhawan, DHQ PO, New Delhi- 110 011

NHQ/Passage
Naval HQ
Sena Bhawan
DHQ PO, New Delhi

PP & R-4
Air HQ
Vayu Bhawan
Rafi Marg, New Delhi- 110 106

Government of India
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
Transport Bhawan
1, Parliament Street
New Delhi – 110 001

No. NH-12037/278/2003/PB/NH-1 12th Nov 2003

SUBJECT : COMPLAINT NO. 6017 / 2002 FILED BY SH. NAVDEEP SINGH R/O PANCHKULA (HARYANA) REGARDING EXEMPTION FROM TOLL TAX TO ARMY PERSONNEL AND THEIR FAMILIES IN PUNJAB STATE HUMAN RIGHTS COMMISSION, CHANDIGARH

Sir

1. *****

2. The matter was referred to Ministry of Law. Ministry of Law and Justice have indicated that Indian Tolls (Army and Air Force) Act 1901 is a special Act which over-rides general acts such as National Highways Act, 1956 **and private vehicles of the officers, soldiers and airmen of regular forces are exempted from paying toll irrespective of whether they are on duty or not.**

3. *****

Sd/-
(A K NAGPAL)
Superintending Engineer
For Director General (RD) and Spl Secy

Appx B

File No. H-24030/32/2014-(Toll)

भारत सरकार

GOVERNMENT OF INDIA

सडक परिवहन एवम् राजमार्ग मंत्रालय

MINISTRY OF ROAD TRANSPORT & HIGHWAYS

Transport Bhavan, 1, Parliament Street,
New Delhi, dated the 17th June, 2014

OFFICE MEMORANDUM

Subject: RTI Act, 2005 - Clarification regarding National Highways Fee (Determination of Rates and collection) Rules, 2008.

Rule-11[b][i] of National Highways Fee (Determination of Rates and Collection) Rules, 2008, as amended, vehicles used for official purposes by the Ministry of Defence including those which are eligible for exemption in accordance with the provisions of the Indian Toll (Army and Air Force) Act, 1901 and rules made there under, as extended to Navy also. Further, as per Section-3 of The Indian Tolls (Army and Air Force) Act, 1901 all officers, soldiers, airmen and all members of the families of officers, soldiers, airmen or authorized followers are exempted from paying toll. References are being received in this Ministry regarding clarification whether:-

[a] under Indian Toll (Army and Air Force) Act, 1901 and rules made there under exemptions are available only to the serving personals and that only on use of Govt. vehicle;

[b] under Indian Toll (Army and Air Force) Act, 1901 and rules made there under no exemptions are available to the retired personals; and

[c] under Indian Toll (Army and Air Force) Act, 1901 and rules made there under no exemptions are available on use of personal vehicle;

2. The issue was re-examined and it is now being clarified that the exemption under the Indian Toll (Army and Air Force) Act, 1901 is available only to the persons who are 'on duty' and does not pertain to retired personals. No exemption is available on use of personal vehicle if it

is not used for discharging any official purpose and duty, even if it accompanies the said official. The exemption is available only on production of pass as specified in the Indian Toll (Army and Air Force) Rules, 1942.)


(N.K. SHARMA)
Director (Toll)

Secretary, Ministry of Defence

Chairman, NHAI

DG (RD)&SS

All JSs/CEs

PS to Minister(RT&H,S)

PPS to Secretary(RT&H)

NIC for uploading on the Ministry's Website

Ministry of Law & Justice w.r.t. their F.T.S. No. 48/JS&LA/SKM/14 dated 11/6/2014

Copy to:-

F.No. H-25016/2/2011-P&P(Toll)(Vol.III)

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Ministry of Law & Justice
Department of Legal Affairs

FTS No. 48/JS & LA(SKM)/2014

Reference note on Pre-page

Ministry of Road Transport & Highways seeks our opinion on certain issues stated at para 8 of page 7 of the note pertaining to The Indian Tolls (Army & Air Force) Act, 1901. The detailed facts of the case may please be referred to at P. 5-7/N

2 After going through the records available on the file we are of the opinion which may be stated point wise below:

(a) As per previous notification which is placed in the file vide letter no. NH-12037/278/2003/PB/NH-1, dated 12.11.2003 of the M/o RT&H, the Indian Toll (Army & Air force) Act, 1901 appears to be a special Act. A well known legal maxim '*Generalia Specialibus Non Derogant*' means that when a matter falls under any specific provision then it must be governed by that provision only, not by the general provision. The general provision must admit to the specific provision of the law. Therefore, The Indian Toll (Army & Air force) Act, 1901 is a special Act which over-rides general Acts such as National Highways Act, 1956 and also, the previous notification of the Ministry of Law & Justice still holds good in this regard.

(b) Section 3 of the Indian Toll (Army & Air Force) Act, 1901 clearly lists and mentions persons and property, which are exempted from toll. It does not limit only to the serving personals but also extends to (Section 3(d), (e)) members of the families of officers or serving personals, only when they are accompanied by anybody of troops, or any official on duty or on the march. Secondly, a combined reading of Section 3 (g) & (h) and Section 2(b) of The Indian Tolls (Army & Air Force) Act, 1901 interalia indicates towards use of private vehicles for official purpose or duty. The vehicles belonging to the government or employed in the Indian military or Air Force, in charge of or accompanying the same when conveying any circumstances as mentioned in section 3 of the said act are exempted from tolls. Hence, under the Indian Toll (Army & Air Force) Act, 1901 and rules made there under, exemptions are not only limited on use of govt. vehicles but also extends to use of private vehicles while discharging official duty (including to and fro).


(c) Section 3 (b) & (c) of The Indian Toll (Army & Air force) Act, 1901 states the requirement for getting exemption from tolls. The main focus in section

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3(b) & (c) is on the word 'Duty' which implies that the official should be in the course of employment. Thus, the above said exemption is available only to the persons who are 'on duty' and does not pertain to retired personals.

(d) According to section 3 (g) of The Indian Toll (Army & Air Force) Act, 1901 and rules, it is very much clear that no exemption is available on use of personal vehicle if it is not used for discharging any official purpose or duty even if it accompanies the said officials. The exemption is available only if the personal vehicle is used for discharging any official purpose or duty then the views of point (b) will be taken.


Adv. R. R. Rasputni
09/06/2014


(Neera) Rawat
Asstt. Legal Adviser
Dated 06.06.2014

EXTRACT OF SECTION 3 OF THE INDIAN TOLLS (ARMY & AIR FORCE) ACT, 1901

3. Exemption from tolls.—The following person and property, namely: —

(a) All officers, soldiers and airmen of—

(i) the Regular Forces.

(ii) any Irregular Corps.

(b) all members of the Territorial Army or of the National Cadet Corps when on duty or when proceeding to or returning from duty.

(c) all officers, soldiers and airmen of the Indian Reserve Forces when proceeding from their place of residence on being called out for service, training, or muster or when, proceeding back to their place of residence after such service, training or muster.

* * *

(g) the carriages, horses, and baggage, and the persons (if any) employed in driving the carriages or in carrying the baggage, of any persons exempted under any of the foregoing clauses, when such carriages, horses, baggage or persons accompanying the persons so exempted under the circumstances mentioned in those clauses respectively,

(h) all carriages and horses belonging to Government or employed in the Indian military or air force service and all persons in charge of or accompanying the same, when conveying any such persons as herein before in this section mentioned or when conveying baggage or stores, or when returning, unladen from conveying such persons, baggage or stores,

(i) all carriages and horses, when moving under the orders of military or air force authority for the purpose of being employed in the Indian military or air force service.

* * *

shall be exempted from payment of any tolls—

(i) on embarking or disembarking, or on being shipped or landed, from or upon any landing-place, or

(ii) in passing along or over any turnpike or other road bridge, or

(iii) on being carried by means of any ferry otherwise demandable by virtue of any Act, Ordinance, Regulation, order or direction of any legislature or other public authority in India;