

No.1789/FD/F3/2023
GOVERNMENT OF PUDUCHERRY
FINANCE DEPARTMENT

Puducherry, dated 14/02/2023

OFFICE MEMORANDUM

Sub: Finance Department – Wrong Pay Fixation in respect of Government Employees subsequent to Grant of Financial Upgradation of Pay under ACPS/MACPS by taking into account Period of Notional Service – Rectification of Erroneous Pay Fixation and Recovery of Excess Payment as per DoPT guidelines

- Ref:** (1) I. D. Note / Office Memorandum No. A. 48011/81/2021/DPAR/CCD(2), dated 07.06.2022, of the DP&AR (PW), Puducherry.
- (2) File I. D. No. A.48011/176/2022/DPAR/CCD(2), dated 24.11.2022 of the DP&AR (PW), Puducherry.
- (3) O. M. No. F. No. 18/26/2011-Estt. (Pay-I), dated 06.02.2014, of the Department of Personnel & Training, Government of India (copy enclosed).
- (4) O. M. No. F. No. 18/03/2015-Estt. (Pay-I), dated 02.03.2016, of the Department of Personnel & Training, Government of India (copy enclosed).

References were received by the Government from various Departments seeking clarification as to whether the promotion granted on notional basis for various reasons can be reckoned for determining eligibility period for the purpose of financial upgradation under MACP Scheme. The issue was taken up with the Department of Personnel & Training (DoPT), Government of India, through the Ministry of Home Affairs (MHA), for clarification, and the Department of Personnel & Administrative Reforms (DP&AR), Puducherry, vide its order cited first under reference, has communicated the clarification given by the DoPT through the MHA in this regard as follows:

"It is clarified that the principles involved in the matter have general applicability for MACP Scheme as the question of stagnation in a particular Grade Pay or Pay Level for 10 years or

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in the intervals of 10, 20 and 30 years of service, would arise only after an employee starts drawing pay on assumption of charge of the post. Therefore, the period of notional promotion till assumption of charge of the post, does not count as qualifying service for determining the eligibility of 10 years stagnation in a particular Grade Pay or Pay Level, for next financial upgradation, in standard hierarchy of Grade Pays / Pay Levels under MACPS."

2. However, it is a fact that before the above said clarification, many Government employees in the Govt. of Puducherry have been granted with financial upgradation under MACPS by counting the period of service rendered on notional basis. Some of these employees have also been paid the monetary benefit, i. e. pay arrears due to the grant of MACP.

3. With regard to the question of whether the clarification issued by the DP&AR vide its order dated 07.06.2022, cited first under reference, shall apply to the past cases also, the DP&AR has clarified vide note cited second under reference, that whenever a clarification is issued clarifying the rules, it is applicable to all those who are in service, unless it has been specifically mentioned in the clarification to the contrary.

4. Accordingly, with the approval of the competent authority, it is hereby instructed that:

(a) Government Departments and Autonomous Bodies shall immediately review all such cases where pay has been erroneously fixed to the employees on grant of financial upgradation under ACPS/MACPS by taking into account the period of notional service rendered, within 30 days from the date of issue of this order, and their pay shall be re-fixed as per rules and in light of the clarification issued by the DP&AR. This shall be done in accordance with the DoPT guidelines, vide order cited third under reference, which *inter alia* states as follows:

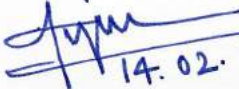
i) In all cases where the excess payments on account of wrong pay fixation, grant of scale without due approvals, promotions without following the procedure, or in excess of entitlements, etc. come to notice, immediate corrective action must be taken.

ii) In a case like this where the authorities decide to rectify an incorrect order, a show-case notice may be issued to the concerned employee informing him of the decision to rectify the order which has resulted in the overpayment, and the intention to recover such excess payments. Reasons for the decision should be clearly conveyed to enable the employee to represent against the same. Speaking order may thereafter be passed after consideration of the representations, if any, made by the employee.

(b) Excess payments made to the employees on account of wrongful pay fixation shall be recovered from the concerned employees by the Departments and Autonomous Bodies, either in lumpsum or in number of instalments to be spread over the reminder of the period of service of the employee, as per the choice of the employee to be obtained in writing (where no choice is expressed within the stipulated time-limit, recovery in instalments shall be the default option). This shall be done strictly as per the DoPT guidelines vide the order cited fourth under reference, which *inter alia* state that the following categories of employees shall be exempted from any recovery:

- i) Recovery from employees belonging to Class – III or Class – IV service (or Group 'C' and Group 'D' service).
- ii) Recovery from retired employees or employees who are due to retire within one year, of the order of recovery.
- iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

//By the Order of the Hon'ble Lt. Governor//


14.02.2023

(ARJUN RAMAKRISHNAN)

UNDER SECRETARY TO GOVT. (FINANCE)

All Commissioner-cum-Secretaries to Government.
All Secretaries to Government
All Secretariat Departments/HODs
All Heads of Autonomous Bodies

Copy to:-

1. The Director of Accounts and Treasuries, Puducherry
2. The Dy Director of Accounts and Treasuries, Karaikal / Mahe / Yanam.
3. The Dy. Accountant General, O/o the AG (Audit), Tamil Nadu and
Puducherry, Puducherry Branch
4. The Central Record Branch, Puducherry

F. No. 18/26/ 2011-Estt (Pay-I)
Government of India
Ministry of Personnel, PG and Pension
Department of Personnel and Training

North Block, New Delhi,
Dated the 6th February, 2014

OFFICE MEMORANDUM

Subject: Recovery of wrongful/excess payments made to Government servants.

The undersigned is directed to say that the issue of recovery of wrongful/excess payments made to Government servants has been examined in consultation with the Department of Expenditure and the Department of Legal Affairs in the light of the recent judgement of the Hon'ble Supreme Court in *Chandi Prasad Uniyal And Ors vs State Of Uttarakhand And Ors*, 2012 AIR SCW 4742, (2012) 8 SCC 417, decided on 17th August, 2012. The Hon'ble Court has observed

as under:

15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.
16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments

have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

2. Hon'ble Supreme Court also distinguished the cases like *Shyam Babu Verma v UOI*, 1994 SCR (1) 700, 1994 SCC (2) 52, *Syed Abdul Qadir and Ors. v. State of Bihar and Ors.*, (2009) 3 SCC 475, *Sahib Ram v. State of Haryana*, 1995 Supp (1) SCC 18 etc., where it had not allowed recovery of excess payment in view of the peculiar facts and circumstances of those cases so as to avoid extreme hardship to the concerned employees, for example, where the employees concerned were mostly junior employees, or they had retired or were on verge of retirement, the employees were not at fault, and recovery which was ordered after a gap of many years would have caused extreme hardship.

3. In view of the law declared by Courts and recently reiterated by the Hon'ble Supreme Court in the above cited case, *Chandi Prasad Uniyal And Ors vs State Of Uttarakhand And Ors*, 2012 AIR SCW 4742, (2012) 8 SCC 417, the Ministries/Departments are advised to deal with the issue of wrongful/excess payments as follows:

- i. In all cases where the excess payments on account of wrong pay fixation, grant of scale without due approvals, promotions without following the procedure, or in excess of entitlements etc come to notice, immediate corrective action must be taken.
- ii. In a case like this where the authorities decide to rectify an incorrect order, a show-cause notice may be issued to the concerned employee informing him of the decision to rectify the order which has resulted in the overpayment, and intention to recover such excess payments. Reasons for the decision should be clearly conveyed to enable the employee to represent against the same. Speaking orders may thereafter be passed after consideration of the representations, if any, made by the employee.
- iii. Whenever any excess payment has been made on account of fraud, misrepresentation, collusion, favouritism, negligence or, carelessness, etc., roles of those responsible for overpayments in such cases, and the employees who benefitted from such actions should be identified, and departmental/criminal action should be considered in appropriate cases.
- iv. Recovery should be made in all cases of overpayment barring few exceptions of extreme hardships. No waiver of recovery may be allowed without the approval of Department of Expenditure.
- v. While ordering recovery, all the circumstances of the case should be taken into account. In appropriate cases, the concerned employee may be allowed to refund the money in suitable installments with the approval of Secretary in the Ministry, in consultation with the FA.

- vi. Wherever the relevant rules provide for payment of interest on amounts retained by the employee beyond the stipulated period etc as in the case of TA, interest would continue to be recovered from the employee as heretofore.


(Mukesh Chaturvedi)

Deputy Secretary to the Government of India
Phone No. 23093176

To

All Ministries/ Departments (as per standard list)

Copy also forwarded to:

1. Secretary General / Registrar General, Supreme Court of India.
2. Secretary General of Lok Sabha Sectt. / Rajya Sabha Sectt.
3. Secretaries in Cabinet Sectt. / Central Vigilance Commission / President's Sectt. / Vice-President's Sectt./ Prime Minister's Office / UPSC / Planning Commission.
4. Controller General of Accounts/Controller of Accounts, Ministry of Finance.
5. Governors of all States/Lt. Governors of all Union Territories.
6. Secretary, National Council of JCM (Staff Side), 13-C, Feroz Shah Road, New Delhi.
7. All Members of Staff Side of the National Council of JCM/ Departmental Council.
8. All Officers / Divisions / Sections of Deptt. of Personal & Training / Deptt. of Administrative Reforms & Public Grievances / Department of Pensions & Pensioners Welfare/ PESB
9. Joint Secretary (Pers.), D/o Expenditure, Ministry of Finance.
10. Additional Secretary (Home), Ministry of Home Affairs.
- ✓ 11. Director NIC, DoPT- for uploading on the web site of the Department under Establishment "Pay Rules".
12. 25 Spare copies.

F.No.18/03/2015-Estt. (Pay-I)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, the 2nd March, 2016

OFFICE MEMORANDUM

Sub: Recovery of wrongful / excess payments made to Government servants.

The undersigned is directed to refer to this Department's OM No.18/26/2011-Estt (Pay-I) dated 6th February, 2014 wherein certain instructions have been issued to deal with the issue of recovery of wrongful / excess payments made to Government servants in view of the law declared by Courts, particularly, in the case of *Chandi Prasad Uniyal And Ors. vs. State of Uttarakhand And Ors.*, 2012 AIR SCW 4742, (2012) 8 SCC 417. Para 3(iv) of the OM *inter-alia* provides that recovery should be made in all cases of overpayment barring few exceptions of extreme hardships.

2. The issue has subsequently come up for consideration before the Hon'ble Supreme Court in the case of *State of Punjab & Ors vs Rafiq Masih (White Washer) etc in CA No.11527 of 2014 (Arising out of SLP(C) No.11684 of 2012)* wherein Hon'ble Court on 18.12.2014 decided a bunch of cases in which monetary benefits were given to employees in excess of their entitlement due to unintentional mistakes committed by the concerned competent authorities, in determining the emoluments payable to them, and the employees were not guilty of furnishing any incorrect information / misrepresentation / fraud, which had led the concerned competent authorities to commit the mistake of making the higher payment to the employees. The employees were as innocent as their employers in the wrongful determination of their inflated emoluments. The Hon'ble Supreme Court in its judgment dated 18th December, 2014 *ibid* has, *inter-alia*, observed as under:

"7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court."

"10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the

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basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or, in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India."

3. The issue that was required to be adjudicated by the Hon'ble Supreme Court was whether all the private respondents, against whom an order of recovery (of the excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. For the applicability of the instant order, and the conclusions recorded by them thereafter, the ingredients depicted in paras 2&3 of the judgment are essentially indispensable.

4. The Hon'ble Supreme Court while observing that it is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement has summarized the following few situations, wherein recoveries by the employers would be impermissible in law:-

- (i) *Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) *Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) *Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) *In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.*

5. The matter has, consequently, been examined in consultation with the Department of Expenditure and the Department of Legal Affairs. The Ministries / Departments are advised to deal with the issue of wrongful / excess payments made to Government servants in accordance with above decision of the Hon'ble Supreme Court in *CA No.11527 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab and others etc vs Rafiq Masih (White Washer) etc*. However, wherever the waiver of recovery in the above-mentioned situations is considered, the same may be allowed with the

express approval of Department of Expenditure in terms of this Department's OM No.18/26/2011-Estt (Pay-I) dated 6th February, 2014.

6. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders are issued with the concurrence of the Comptroller and Auditor General of India.

7. Hindi version will follow.



(A.K. Jain)

Deputy Secretary to the Government of India

1. All Ministries / Departments of Government of India
2. ✓ NIC, DOP&T – with a request to upload this OM on the Department's website under OMs & Orders (Establishment → Pay Rules) and also under "What is New".

Copy also forwarded to:

1. The Comptroller & Auditor General of India.
2. Secretary General, Supreme Court of India.
3. Controller General of Accounts / Controller of Accounts, Ministry of Finance.
4. Union Public Service Commission / Lok Sabha Sectt. / Rajya Sabha Sectt. / Cabinet Sectt. / Central Vigilance Commission / President's Sectt. / Vice-President's Sectt. / Prime Minister's Office / Niti Aayog.
5. Governments of all States and Union Territories.
6. Department of Personnel and Training (AIS Division) / JCA / Admn. Section.
7. Secretary, National Council of JCM (Staff Side), 13-C, Feroz Shah Road, New Delhi.
8. All Members of Staff Side of the National Council of JCM / Departmental Council.
9. All Officers / Sections of Department of Personnel and Training / Department of Administrative Reforms & Public Grievances / Department of Pensions & Pensioners' Welfare / PESB.
10. Joint Secretary (Pers), Department of Expenditure, Ministry of Finance.
11. Additional Secretary (Union Territories), Ministry of Home Affairs.