

F. No. 01(14)/2016-E.II(A) (Part-III)

Government of India

Ministry of Finance

Department of Expenditure

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North Block, New Delhi

Dated 01st April 2024

OFFICE MEMORANDUM

Subject: Waiver of recovery of excess payment made to Government employees - General instructions for Ministries/Departments – reg.

The undersigned is directed to say that Rule 15 of Delegation of Financial Power Rules (DFPRs), 2024 deals with waiver of recovery of overpayment made to Government Servants. As per this rule, a Department of Government of India, an Administrator and any other Subordinate Authority to the Department, to whom powers may be delegated by or under special order of the President, may waive the recovery of an amount found to have been overpaid mistakenly to Government servant, in excess of their entitlement, subject to certain conditions and financial limits as laid down under this rule.

2. The date of order for recovery of overpayment is a critical input for decision regarding waiver of such recovery. Therefore, such order for recovery of overpayment should be issued within one month from the date of detection of overpayment.

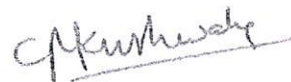
3. As per Rule 15 of DFPR 2024, a Department of Government of India may waive recovery of overpayment upto Rs. 2,00,000/- (Rupees two lakh only) in the case of each individual with the concurrence of Financial Adviser of the Department. The following guidelines may be adhered to while processing such cases:

- (i) The Ministries/ Department should examine all proposal(s) in terms of the provisions laid down in Rule 15 of DFPRs.
- (ii) Ministries/ Departments should verify that in cases of waiver, no serious negligence has taken place on the part of any Government servant, which may call for disciplinary action by a higher authority.
- (iii) In case a Ministry/ Department is of the view that the loss is on account of a defect in existing rules or procedures, the same shall be brought to the notice of Department/ Ministry with authority to amend such rules or procedures.
- (iv) The guidelines issued by DoP&T vide its O.M. dated 02.03.2016 shall be strictly adhered to by the administrative Ministry/Department while considering waiver of excess payment made to Government servants. Each case of waiver should be recommended by the Financial Advisor and approved by the Administrative Secretary.

- (v) In cases where the waiver of recovery arises from a Court direction, the Ministries/ Departments should satisfy themselves that there are appropriate justifications for not challenging such Court direction.
- (vi) In case a recovery which is subsequently waived, is on account of incorrect interpretation of rules or procedures, Ministries/ Departments may review all similarly placed cases to check requirement of waiver of recovery in future cases. In case of incorrect interpretation of rules or procedures, Ministries/ Departments shall take appropriate measures to ensure that such lapses are corrected. If any inquiry has been made to fix the responsibility, the final report as well as action taken by the Ministry may be kept on record.
- (vii) In case an incorrect interpretation of rules or procedures (e.g., incorrect pay fixation) has remained un-detected over a long period of time, Ministry/ Department may keep on record appropriate justification why such cases were not noticed during regular review, internal audit, etc.

4. Cases involving waiver of recovery of more than Rs. 2,00,000/- (Rupees two lakh only) should be referred to this Department. Such cases may be forwarded along with a detailed note covering information on para 3 along with the filled in checklist (attached as Annexure to this O.M.).

5. This issues with the approval of the Competent Authority.



(C.P. Kushwaha)

Under Secretary to the Govt. of India

To

1. All Ministries/Departments of Government of India
2. Financial Advisor of all Ministries/Departments of Government of India

Checklist for waiver of recovery

1.	Name	
2.	Designation	
3.	Amount for waiver	
4.	Reason for overpayment	
5.	Date of Detection of Overpayment	
6.	Date of issue of order of recovery	
7.	Date of representation submitted by Officer/official mentioning financial hardship	
8.	Date of Disposal of Representation and decision taken on the same.	
9.	Category of exemption as per DoP&T's OM dated 02.03.2016	
10.	Relevant Rules under which pay fixation or allowance drawn resulted to overpayment	
11.	Whether Administrative Ministry is satisfied that loss does not disclose a defect in rules or procedures or there has not been any serious negligence on the part of any Government servant which may call for disciplinary action by a higher authority.	
12.	Whether verification of Service Book have been done periodically. If yes, why such wrong fixation was not detected in such verification.	
13.	Why such wrong fixation was not detected during internal audit.	

Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
Estt. (Pay-I) Section

Recovery / waiver of the wrongful / excess payments made to Government servants.

Department of Personnel & Training has issued instructions from time to time regarding recovery of wrongful / excess payments made to Government servants. The essence of these instructions has been summarized in the following paras for guidance and better understanding.

I. Supreme Court Judgments on the matter of recovery of excess payments:

The issue of recovery of wrongful/excess payments made to Government servants was examined by the Department of Personnel & Training in consultation with the Department of Expenditure and the Department of Legal Affairs in the light of the following judgments of the Hon'ble Supreme Court:

- (i) *Chandi Prasad Uniyal and Ors Vs State Of Uttarakhand And Ors*, 2012 AIR SCW 4742, (2012) 8 SCC 417, decided on 17th August, 2012
- (ii) *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)* decided on 18th December, 2014.

II Procedure to deal with the issue of wrongful/excess payments:

In view of the law declared by Courts and reiterated by the Hon'ble Supreme Court in the case of Chandi Prasad Uniyal and Ors Vs State of Uttarakhand and Ors, 2012 AIR SCW 4742, (2012) 8 SCC 417, the Ministries/Departments were 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 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, favoritism, 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 Financial Adviser (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 Travelling Allowance (TA), interest would continue to be recovered from the employee as heretofore.

[Para 3 of DoPT's OM No 18/26/2011-Estt (Pay-I) dated 06.02.2014]

III Situations wherein recoveries of wrongful/excess payments by the employers would be impermissible in law

Para II(iv) of the above instructions provides *inter-alia* that recovery should be made in all cases of overpayment barring few exceptions of extreme hardships. The issue was considered by 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}***. In this case, the Hon'ble Supreme Court observed 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. The Hon'ble Supreme Court 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.

IV Procedure to deal with wrongful/excess payments by the Administrative Ministry/ Departments

Ministries / Departments may deal with the issue of wrongful / excess payments made to Government servants accordingly. Wherever waiver of recovery in the above-mentioned situations is considered, administrative Ministries/ Departments may process the same with the express approval of Department of Expenditure in terms of DoPT's OM No.18/26/2011-Estt (Pay-I) dated 6th February, 2014.

[DoPT's OM No. 18/03/2015-Estt (Pay-I) dated 02.03.2016]

Note : List of the OMs mentioned in this document is annexed. In case any reference to the relevant OM is required, the same may be accessed from the Archive Section of Department of Personnel and Training's website.

ANNEXURE

List of OMs mentioned in this Document

1. DoPT's OM No 18/26/2011-Estt (Pay-I) dated 06.02.2014
2. DoPT's OM No. 18/03/2015-Estt (Pay-I) dated 02.03.2016

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

North Block, New Delhi
Dated 3rd October, 2022

OFFICE MEMORANDUM

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

The undersigned is directed to invite attention to the D/o Personnel & Training (DoPT)'s OM No 18/03/2015-Estt (Pay-I) dated 02.03.2016 on the subject mentioned above (copy enclosed).

2. Recently, the Hon'ble Central Administrative Tribunal (CAT), Lucknow Bench, while hearing the OA No. 302/2022 (Atul Chandra Srivastava Vs Uol & Ors.) and OA No. 303/2022 (Mohammad Irshad Vs Uol & Ors.) has passed an interim Order dated 20.07.2022 expressing concern over the mistakes/clerical faults on the part of Ministries / Departments / Offices leading to incorrect fixation of pay etc., which result in excess payments being made to the Government Servants.

3. The Hon'ble Tribunal in its Order dated 20.07.2022 referred to the judgment dated 18.12.2014 of the Hon'ble Supreme Court in CA No. 11527 of 2017 (arising out of SLP C No.11684 of 2012) State of Punjab & Ors Vs Rafiq Masih (White Washer) etc. and instructions issued vide DoPT's OM no 18/03/2015-Estt.(Pay-I) dated 02.03.2016 in light thereof. In its judgment, the Hon'ble Supreme Court identified five situations wherein recovery of excess payment made would be impermissible in Law. One of the situations where recovery of excess payment has been decided to be impermissible relates to the employees belonging to Class-III and Class-IV Service (or Group 'C' and Group 'D' Services). The Hon'ble Tribunal has noted that the applicants in both the cases under consideration are Group 'C' employees and the law in this regard has already been laid down in the judgement dated 18.12.2014 of the Hon'ble Supreme Court and subsequent instructions issued vide DoPT's OM dated 02.03.2016.

4. In this context, it is observed that the time taken by the Ministries/Departments/Offices to discover mistakes/clerical faults in pay fixation of their employees is highly avoidable. The situation of overpayments occurs on account of erroneous calculation of payments due to an employee. If not detected in time, amount becoming due for recovery due to these excess payments keep accruing. In many cases, these overpayments come to notice of the administrative authority at a very late stage resulting in substantial amounts becoming due for recovery. However, in the wake of the

Order dated 18.12.2014 of the Hon'ble Supreme Court referred above, these recoveries are to be considered for waiver in the types of cases identified therein. As a result, the administrative authorities concerned are compelled to explore other alternatives available to recover the amount involved or seek approval of the D/o Expenditure to waive off the same in accordance with the procedure prescribed in this Department's OM dated 02.03.2016 read with the instructions contained in DoPT's OM No 18/26/2011-Estt (Pay-I) dated 06.02.2014.

5. The matter has been examined in consultation with the D/o Expenditure. It is advised that –

- i. Ministries / Departments / Offices may exercise extreme caution and take suitable measures while handling pay fixation of their employees as also in other cases involving payments so as to ensure that such lapses/mistakes do not occur;
- ii. Pay fixation orders issued due to grant of MACP/ACP/financial upgradation/ increment/ promotion etc. may necessarily be audited by the internal audit and/or the Pay & Accounts Office concerned within 3 months of issuing such orders; and
- iii. In cases where the employee is due to retire within next 4 years, audit of previous pay fixation orders shall be done on priority.

6. Hindi Version will follow.


(Shukdeo Sah)

Under Secretary to the Government of India
Tel. No.011-23090489

To

All Ministries/Departments of Government of India.

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 Office/ Niti Aayog.
5. Government 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/ Department 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.
12. NIC, DOPT – with request to upload this O.M. on the Department's website under OMs & Orders (Establishment—Pay Rules) and also under "What is New".
13. Hindi Section, DoPT for Hindi Translation.

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:-

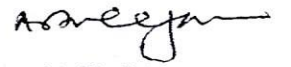
- (i) *Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) *Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) *Recovery from employees, when the excess payment has been 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".

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5. Governments of all States and Union Territories.
6. Department of Personnel and Training (AIS Division) / JCA / Admn. Section.
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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.