

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.

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](#)