

F.No.18/2014-CS-I(S)
Government of India
Ministry of Personnel, PG & Pensions
Department of Personnel & Training

2nd Floor, A Wing, Lok Nayak Bhawan, Khan Market
New Delhi, the 13th July, 2015

ORDER

13 JUL 2015

Whereas stepping up of pay of Assistants of Central Secretariat Service (CSS) on their promotion to Section Officers grade is governed by the following OMs:

- (a) OM No.5/16/80-CS.I dated 13.04.1988
- (b) OM No.5/21/92-CS.I dated 23.02.1994
- (c) OM No.5/1/96-CS.I dated 08.10.1996

OM dated 13.4.1988 was issued on acceptance of award by Board of Arbitration which allowed stepping up of pay of an Assistant of CSS, who is senior by virtue of having been recruited through an earlier examination but is drawing less pay on promotion in the Grade of Section Officer than his junior recruited through a later examination, up to a level equal to the pay of such junior Section Officer in the same cadre. Vide other two OMs, the benefit of stepping up was extended on appointment as SO through Limited Departmental Competitive Examination (LDCE) and also in case of senior promotee Assistants / DR Assistants recruited through same Select List/LDCE, as the case may be.

2. Whereas there are general guidelines of stepping up of pay issued by DoPT vide OM dated 04.11.1993.

3. Whereas certain clarifications were issued by this Department, in the years 2007 and 2008 to individual Ministries/Departments, in response to references received from them, which were at variance with the general conditions of stepping up of pay i.e. stepping up of pay was allowed even if junior was drawing more pay than the senior in the lower grade i.e. in Assistant Grade.

4. Whereas the whole matter was under review in this Department as the clarifications issued in the years 2007 and 2008 were not in tune with the general conditions of stepping up of pay.

5. Whereas this Department vide OM dated 29.5.2009 with the approval of Secretary (P) withdrew clarifications issued in the years 2007 & 2008 and advised Ministries/ Departments to strictly allow stepping up enforcing conditions laid down in OM dated 8.10.1996. It was also clarified that that the OM dated 08.10.1996 was issued in consultation with Department of Expenditure on the basis of the judgements of Hon'ble Apex Court in the matters of UOI & another vs. K.C. Sehgal and L.K. Chawla vs. UOI and the conditions prescribed in the said OM stand good and should be strictly enforced. Departments were also informed vide OM dated

21.05.2010 that as the matter was still under consideration, status-quo, as on date, might be maintained in the matter of stepping up of pay of Section Officers of CSS till the matter attained finality. Eventually, the matter attained finality and a consolidated OM as vetted by the Estt.(Pay) Division of this Department and Department of Expenditure, was issued with the approval of Secretary (P) on 20.05.2014.

6. Whereas this Department vide OM No.18/2/2007-CS-I(S) dated 20.05.2014 had requested all the Ministries/Departments that stepping up of pay already allowed in cases where the individuals were not covered by the OMs dated 13.04.1988, 23.02.1994 and 08.10.1996 and where conditions laid down in the OM dated 04.11.1993 were also not fulfilled, should be reviewed and pay re-fixed accordingly. They were further advised that excess payments made to the employees in the cases of wrong stepping up of pay should be recovered in terms of DOP&T's OM No.18/26/2011-Estt(Pay-I) dated 06.02.2014 and a compliance report in this regard furnished to this Department.

7. Whereas it was further clarified vide O.M. No. 18/2/2007-CS.I dated 8.7.2014 that the aforesaid OMs dated 13.4.1988, 23.2.1994, 8.10.1996 and general instructions governing stepping of pay are not exclusive of each other. The general conditions of stepping up of pay inter-alia includes that even in the lower post the junior officer draws higher rate of pay than the senior on any account, the senior will not be eligible for claiming stepping of pay.

8. Whereas the aforesaid OM dated 06.02.2014 which was issued in pursuant to Supreme Court's order dated 17.08.2012 in *Chandi Prasad Uniyal and ors vs. State of Uttarakhand and ors.* prescribed the procedure to be followed for recovery of wrongful/excess payments to the Government servants. The OM stipulated that:

- i) The excess payment of public money, which belongs neither to the officers who have effected over payment nor that of the recipients. Effecting excess payment of public money by Government officers may be due to various reasons like negligence, carelessness, collusion, favouritism etc. 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;
- ii) In all cases, where the excess payments on account of wrong pay fixation etc. come to notice, immediate corrective action must be taken.
- iii) 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 overpayment and intention to recover such overpayments. 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

- 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.

9. Whereas a few CSS officers worked/working in Union Public Service Commission (UPSC) aggrieved by OM dated 20.5.2014 and 8.7.2014 preferred an appeal to the President of India under Rule 23 of the CCS (CCA) Rules, 1965. In the appeals, they prayed for the following:-

- i) Not to give effect to the DoPT order dated 20.05.2014 and 08.07.2014
- ii) Not to make recovery from pay
- iii) Not to cancel the stepping up orders issued by various Ministries/Departments as it were issued as per the instructions prevalent at that time.

10. Whereas the details of officers who filed the appeal are as under:

| Sl. No. | Name and present designation of the appellant (S/Shri) | Date of issue of order for stepping up of pay | Pay stepped up with reference to | Date of appeal |
|---------|--|---|----------------------------------|----------------|
| 1 | Inderjeet, US | 17.03.10 | S.K. Mahto | 18.11.14 |
| 2 | Neeraj Sachdeva, US | 31.01.12 | P.K. Sahoo | 04.12.14 |
| 3 | Y.S. Yadav, US | 31.10.12 | P.K. Sahoo | 05.12.14 |
| 4 | Hemant Kumar, US | 30.01.13 | Inderjeet | 05.12.14 |
| 5 | Ujjwal Kumar, US | 30.01.13 | Inderjeet | 10.12.14 |
| 6 | Bhagirath Jha, US | 30.01.13 | Inderjeet | 11.12.14 |
| 7 | Sunil Kumar, US | 30.01.13 | Inderjeet | 05.12.14 |
| 8 | Sanjay Prasad, US | 30.01.13 | Inderjeet | 10.12.14 |
| 9 | M.C. Sonowal, US | 30.01.13 | Inderjeet | 05.12.14 |
| 10 | Vinod Kumar, US | 12.03.12 | Neeraj Sachdeva | 17.12.14 |
| 11 | Vijay Kumar, US | 02.11.12 | Neeraj Sachdeva | 23.12.14 |

11. Whereas stepping up pay has been allowed to a few CSS Officers by Ministries/ Departments ignoring general guidelines resulting in wrong fixation of pay. This was followed by stepping up of pay in a many other cases in a chainlike manner with reference to the pay of their inter-se juniors whose pay was wrongly stepped up.

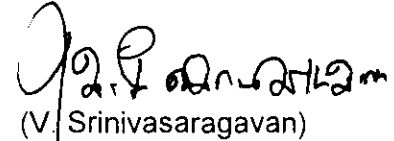
12. Whereas in pursuant to this Department's O.M. dated 20.5.2014 and 8.7.2014 Ministry of Textiles have already issued orders for withdrawal of

stepping up of pay issued in respect of S/Shri S.K. Mahto, P.K. Sahoo and Inderjeet, USs.

13. Whereas the appeals filed by the above officers were considered by the Appellate Authority and the appeals are rejected on the following grounds:

- (i) Orders for stepping up of pay of these officers were issued even after issue of O.M. dated 29.5.2009 i.e. after withdrawal of certain clarifications issued in response to references of individual Ministires/ Departments;
- (ii) Stepping up of pay was allowed with reference to pay of juniors whose pay was in the first instance wrongly stepped up;
- (iii) General conditions of stepping up of pay inter-alia including that the senior should have drawn more pay than the junior in lower grade was in force since long i.e. since 1966 and they never been withdrawn,
- (iv) Stepping up of pay allowed to the appellants was not in conformity with the general principles and also not in terms of OM dated 8.10.1996;
- (v) Any amount of public money, paid or received without the authority of law should be recovered

For and on behalf of the President of India


(V. Srinivasaragavan)

Under Secretary to the Government of India

To

1. Shri Inderjeet, Under Secretary, UPSC
2. Shri Neeraj Sachdeva, Under Secretary, MHFW (presently Deputy Director (Admn.), Lady Hardinge Hospital, New Delhi)
3. Shri M.C. Sonowal, Under Secretary, UPSC
4. Shri Hemant Kumar, Under Secretary, UPSC
5. Shri Sunil Kumar, Under Secretary, UPSC
6. Shri Y.S. Yadav, Under Secretary, UPSC
7. Shri Sanjay Prasad, Under Secretary, UPSC
8. Shri Ujjwal Kumar, Under Secretary, UPSC
9. Shri Bhagirath Jha, Under Secretary, UPSC (presently on deputation to Cabinet Secretariat)
10. Shri Vinod Kumar, Under Secretary, M/o. Health & FW
11. Shri Vijay Kumar, Under Secretary, UPSC

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Copy to:

- i) Secretary, UPSC, Dholpur House, Shahjahan Road, New Delhi w.r.t. their letter No.A-26022/1/2014-Admn.I dated 12.02.2015.
- ii) All Ministries/ Departments – They are advised to urgently review the stepping up of pay allowed so far with a view to ensure compliance of instructions issued vide OM dated 20.05.2014 and 08.07.2014 and forward the compliance report in the matter

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