

CHAPTER XVIII- IRREGULARITIES IN PAYMENT OF ENTITLEMENTS, RECOVERIES AND CORRECTIONS/RECTIFICATIONS BY CPSEs AT THE INSTANCE OF AUDIT

NLC India Limited and Rashtriya Ispat Nigam Limited

18.1 Excess payment of Performance Related Pay to the employees

NLC India Limited and Rashtriya Ispat Nigam Limited made excess payment of Performance Related Pay for the years 2012-13 and 2013-14 to its employees by considering income from non-core activities in computation of Profit Before Tax in violation of the guidelines issued by Department of Public Enterprises.

In November 2008, Department of Public Enterprises (DPE), Ministry of Heavy Industries and Public Enterprises approved revised pay scales of Board level and below Board level Executives and Non-unionised Supervisors of CPSEs. The implementation guidelines of the notification dealt with admissibility, quantum and procedure for determination of Variable Pay/Performance Related Pay (PRP). As per these guidelines, 60 per cent of the PRP would be given with the ceiling of 3 per cent of Profit Before Tax (PBT) and 40 per cent of PRP would come from 10 per cent of incremental profit over the previous year. The total PRP, however, would be limited to 5 per cent of the year's PBT. DPE, vide its OMs dated 02.11.2010, 18.09.2013 and 02.09.2014, clarified that PRP should be distributed based on profit accruing from core business activities of the CPSEs only. DPE directed (September 2014) to make these directions applicable from 2012-2013 onwards.

Audit observed that NLC India Limited (NLC) and Rashtriya Ispat Nigam Limited (RINL) did not follow the guidelines of DPE in determining the PBT for the current year, as well as for computing the incremental profit for arriving at the amount distributable as PRP. Both Companies did not deduct the income earned from non-core activities. NLC included interest on Bonds, interest received from employees towards various advances, surcharge received from customers for delayed payment, profit on sale of assets, interest on mobilisation advances, scrap sales, guest house rent, canteen sales etc. while computing the PBT for the purpose of PRP. Similarly, RINL included interest on deposits, interest received from employees towards various advances, sale of scrap, insurance claims, commissions etc. while computing the PBT for PRP. This resulted in excess payment of PRP to the employees amounting to ₹26.75 crore in case of NLC and ₹17.37 crore in case of RINL for the years 2012-13 and 2013-14.

The Management of NLC replied (October 2016) that power dues from DISCOMS/State Electricity Boards were converted into SLR power bonds in the year 2006 which were considered as long term investment and any income on delayed payment of power dues was treated as business income only. It asserted that other categories of dues like interest collected from employees on advances, surcharge collected from DISCOMS/State Electricity Boards for delayed payment of their dues, guest house rent, bus collection, canteen sales, penalties and liquidated damages, revenue from sale of scrap and profit on

sale of assets were treated as business income only. The Ministry of Coal endorsed (December 2016) the reply of NLC.

The Management of RINL stated (October 2016) that DPE had stipulated that only idle cash/bank balances were not to be considered for PRP. It further mentioned that as prudent financial management, the funds were continued in deposits wherever interest earnings were more than the borrowing costs to minimize interest burden on the Company and it did not represent parking of surplus funds. Other income also comprised of liquidated damages, recoveries towards material shortage and reversal of provisions/expenditure booked in previous years, which were part of core business activity. Hence, there was no violation of DPE guidelines.

Reply of NLC and RINL were not acceptable since the OMs issued by DPE cited above clearly stated that profit arising from the core business activities should only be considered for calculating the PBT. Hence, interest earned on SLR Bonds or on other deposit, not being a part of the core business activity of these Companies, should have been excluded while computing the PBT. Similarly, income from other non-core activities like guest house rent, bus collection, canteen sales, surcharge collected from DISCOMS/State Electricity Board etc. should also have been excluded. The other items pointed out by RINL like liquidated damages, recoveries towards material shortage and reversal of provisions/expenditure booked in previous years were considered by Audit as part of PBT while computing the excess payment of PRP by RINL.

Thus, due to violation of DPE guidelines, NLC and RINL made excess payment towards PRP to its employees, amounting to ₹44.12 crore for the year 2012-13 and 2013-14.

The matter was reported to the Ministries in October 2016; their reply was awaited (January 2017).

GAIL (India) Limited, Hindustan Petroleum Corporation Limited, Bharat Petroleum Corporation Limited and Steel Authority of India Limited

18.2 Undue benefit extended to the executives in the form of shift allowance

GAIL (India) Limited, Bharat Petroleum Corporation Limited, Hindustan Petroleum Corporation Limited and Steel Authority of India Limited extended undue benefit to the executives by paying shift allowance amounting to ₹64.38 crore in violation of DPE guidelines.

Government of India formulated the policy for revision of pay and allowances of Board level and below Board level executives as well as non-unionised supervisors in Central Public Sector Enterprises (CPSEs) with effect from 1 January 2007 vide DPE O.M.1 dated 26 November 2008. The said OM inter-alia provided that the Board of Directors of the CPSEs would decide on the allowances and perks admissible to the different categories of executives subject to a maximum ceiling of 50 per cent of the basic pay. CPSEs may follow 'Cafeteria Approach' allowing the executives to choose from a set of perks and allowances. Only four allowances viz North East allowance, Allowances for underground mines, Special Allowance for serving in difficult and far flung areas as approved by the Ministry and Non practicing allowance for Medical Practitioners were kept outside the

purview of ceiling of 50 *per cent* of basic pay. It was also directed that infrastructure facilities created by CPSEs like hospitals, colleges, schools, clubs etc. should be monetized on the basis of recurring expenditure on maintaining and running the infrastructure for the purpose of computing the perks and allowances.

A. While reviewing perks and allowances under 'Cafeteria Approach' GAIL (India) Limited (the Company) decided (2011) to increase available entitlement for the executives from 47 *per cent* (in 2010) to 49 *per cent* of their basic pay w.e.f. 1 April 2011 after considering one *per cent* of the basic pay for monetized value of the infrastructure facilities.

Audit observed that the Company has been paying shift allowance to its executives and keeping the same outside the purview of ceiling of 50 *per cent* of basic pay. During 2010-11 to 2015-16, shift allowance of ₹11.03 crore was paid to executives of the Company.

The Company stated (November 2016) that shift working being an essential aspect of round the clock plant operations, shift duty allowance was an integral element of the compensation of such employees who are deployed in shifts. It was also a requirement under Factories Act, 1948. Shift duty allowance was being allowed since beginning considering the very nature of duties involved in hydrocarbon industry. If shift duty allowance was stopped, there would be serious industrial relations issue and the employees would be de-motivated. There would ultimately be loss to the Company and Nation as a whole considering the hydrocarbon sector which was very sensitive. In principal, shift duty engagement also involved hardship at the working station and needed to be viewed like special allowance to employees who work at difficult and far flung locations which was kept outside the 50 *per cent* ceiling. The expenses on shift duty were actually of the nature of operational expenses and there was no merit in considering them within the perks & allowances of the concerned employee. Further, such operational expenses would not be part of an individual's perks ceiling of 50 *per cent* of Basic Pay as it would otherwise deplete employees own perks which in any case was receivable by him in normal course if posted in general work-schedule *i.e.*, other than shift. Also, if these employees were given a choice to choose from a set of perks and allowances under the cafeteria approach that include shift allowance, then no employee would choose shift allowance as it would lead to hardship by way of rotating shift duty.

The reply is not justifiable as DPE had categorically stated (June 2013) that except four allowances as mentioned in DPE OM¹ dated 26 November 2008, no further allowance/benefit/perks was admissible outside the 50 *per cent* ceiling of basic pay under Cafeteria Approach. As regards the apprehension expressed by the Management that operations would suffer if executives did not choose shift allowance, it needs to be appreciated that in a cafeteria approach with the executives given the freedom to choose the allowance, enforcement of duties cannot be linked to choice of a particular allowance in preference to others. Further, Factories Act does not contemplate payment of shift allowance for shift duties.

¹ *Department of Public Enterprises office Memorandum No.2(70)08-DPE(WC)-GL-XVI/08 dated 26 November 2008*

Thus, payment of ₹11.03 crore made by the Company towards shift allowance was in violation of DPE guidelines and therefore, irregular.

Ministry of Petroleum and Natural Gas accepted (February 2017) the audit observation and advised GAIL (India) Limited to take remedial action.

B. Audit observed that Bharat Petroleum Corporation Limited (BPCL) and Hindustan Petroleum Corporation Limited (HPCL) are paying shift allowance¹ to its executives and keeping the same outside the purview of ceiling of 50 per cent of basic pay. During 2010-11 to 2016-17 (up to June 2016) BPCL paid ₹22.17 crore and HPCL paid ₹20.70 crore paid respectively to their executives.

The Management (BPCL) stated (March 2016) that the rotating shift duty is a contingent and need based requirement for employees working in round-the-clock operating refineries/bottling plants/installations etc. and is paid specifically for those job groups of employees who work in 8 hour shifts, at times for as long as 16 hours in double shifts. Thus, this allowance is not paid universally to all employees but is similar to the Underground Mining Allowance or Non-Practicing Allowance which are permitted under DPE Guidelines. If compensation for this is discontinued, no Officer will be willing to work in continuous shifts/ night working and the Oil Industry will be seriously jeopardized.

The Management HPCL stated (March 2016) that rotating shift duty involves inconvenience to the employees/Officers manning the same as it requires working and sleeping at times other than natural cycle of any human being and affects the employees' health and work-life balance. Accordingly, this allowance cannot be considered as Perks & Allowances since they are paid only to certain class of employees working in shifts. Also, DPE's various OMs governing perks and allowances do not envisage inclusion of this kind of amount paid for hazardous situation under the ambit of perks and allowances.

The reply is not acceptable as shift allowance is meant to ensure continuous round the clock production and is not meant to compensate for hazardous nature of duties performed by any employee. As regards the apprehension expressed by BPCL Management that the operations will be jeopardized if shift allowance is not paid to Officers, it needs to be appreciated that enforcement of essential duties cannot be linked to payment of a particular allowance. Moreover, DPE in this regard had categorically stated (June 2012 and June 2013) that except four allowances as mentioned in DPE OM dated 26 November 2008, no further allowance/benefit/perks was admissible outside the 50 per cent ceiling of basic pay under Cafeteria Approach.

Thus, payment of ₹42.87²crore made by the Companies towards shift allowance was in violation of DPE guidelines and therefore, irregular.

¹ Shift allowance was being paid @ ₹130 and ₹200 for morning/evening shift and night shift, respectively, for A and B grades and @ ₹155 and ₹225 for morning/evening shift and night shift, respectively, for C and above grades in respect of HPCL and BPCL.

² ₹22.17 crore + ₹20.70 crore

The matter was reported to the Ministry of Petroleum and Natural Gas in October 2016; their reply was awaited (January 2017).

C. Steel Authority of India Limited (Company) decided (October 2009) to implement the said DPE OM with effect from 5 October 2009. Audit observed that while implementing Cafeteria Approach for payment of perks and allowances to the executives, the Company chose to pay night shift allowances outside the purview of ceiling of 50 *per cent* of basic pay prescribed under the Cafeteria Approach. Payment of night shift allowances thus was in violation of the said DPE OM which permitted payment of only the above referred four allowances outside the ceiling of 50 *per cent* of basic pay.

The Company stated (November 2016) that the night shift allowance paid earlier had been discontinued and the executives were now (since October 2012) being reimbursed incidental expenses on certification basis for performing their night shift duties as per organisational requirements which may be treated outside the Cafeteria Approach. The Company also stated that the working conditions were really tough and this reimbursement was introduced to ensure availability of executives for continuous production. Further, the Company opposed equating such reimbursement of incidental expenditure to the four allowances kept outside purview of cafeteria approach as allowances were linked to percentage of basic pay whereas the reimbursement was of a fixed amount.

The Management reply is not tenable as steel plants of the Company operate on three shifts basis to ensure round the clock production. All three shift duties are performed in the same operational setup and surroundings. The allocation of eight hourly shift duties are normal organisational requirement. DPE vide OMs dated 01 June 2011, 29 June 2012 and 11 June 2013 reiterated that no other allowances or perks outside the 50 *per cent* ceiling except the four allowances originally referred in the DPE OM dated 26 November 2008 are permissible. During the period from 05.10.2009 to 31.03.2016, irregular benefits of ₹ 10.48 crore on account of night shift allowance/reimbursement of incidental expenses for performing night shift, was paid to executives of the Company.

The matter was reported to the Ministry of Steel in September 2016; their reply was awaited (January 2017).

[Airports Authority of India, Bharat Heavy Electricals Limited, Mangalore Refinery and Petrochemicals Limited, National Insurance Company Limited, National Projects Construction Corporation Limited, Northern Coalfields Limited, NLC India Limited, Oil India Limited, Rashtriya Chemicals and Fertilizers Limited, SJVN Limited, The New India Assurance Company Limited, The Oriental Insurance Company Limited and Western Coalfields Limited](#)

18.3 Recoveries at the instance of audit

In 20 cases pertaining to 13 CPSEs, audit pointed out that an amount of ₹86.97 crore was due for recovery. The management of CPSEs had recovered an amount of ₹66.28 crore (76 *per cent*) during the period 2015-16 as detailed in **Appendix-I**.

Balmer Lawrie & Company Limited, National Fertilizers Limited, National Payments Corporation of India Limited and Oil & Natural Gas Corporation Limited

18.4 Corrections/rectifications at the instance of audit

During test check, cases relating to violation of rules/regulations and non-compliance of guidelines were observed and brought to the notice of the management. Details of the cases where corrective action was taken or changes were made by the management in their rules/regulations etc. at the instance of audit are given in **Appendix-II**.