CHAPTER XIV: DEPARTMENT OF PUBLIC ENTERPRISES

Bharat Heavy Electricals Limited, Bharat Petroleum Corporation Limited, Coal India Limited, Container Corporation of India Limited, Dedicated Freight Corridor Corporation of India Limited, Fresh & Healthy Enterprises Ltd., GAIL India Limited, Hindustan Petroleum Corporation Limited, Indian Railway Catering and Tourism Corporation Limited, IRCON International Limited, NMDC Limited, Oil India Limited, Oil and Natural Gas Corporation Limited, Rail Vikas Nigam Ltd., Railtel Corporation of India Limited, Rashtriya Ispat Nigam Limited, RITES Limited, Steel Authority of India Limited

14.1 Non-recovery of perquisite tax

The Management of eighteen public sector enterprises authorized payment of perquisite tax of ₹ 363.38 crore for providing housing accommodation, which was beyond the delegated powers of respective Boards.

Section 17 of the Income Tax Act 1961, as amended (November 2007) with retrospective effect from 1 April 2006 defines value of concession in the matter of rent for accommodation provided by the employer. As per the said amendment, value of concessions of employees other than Central/State Governments, i.e., Public Sector Undertakings (PSUs) etc. is specified as 15 *per cent* or 10 *per cent* or 7.5 *per cent* of the salary depending upon population of the cities where accommodation was provided. Accordingly perquisite tax was to be computed.

A number of writ petitions were filed by the different employees association of PSUs in different High Courts challenging the constitutional validity of the aforesaid amendment which were dismissed by the Hon'ble Courts. However, the Board of Directors of the following eighteen PSUs decided to absorb the perquisite tax in the matter of rent for accommodation provided by the employer.

It was observed in Audit that such payments were beyond the delegated powers of the Board as there was no specific approval of the Government validating such payments amounting to ₹ 363.38 crore as detailed below:

Sl. No.	Name of the Ministry	Name of the Company	Period	Amount (₹ in crore)
1	Ministry of Steel	Steel Authority of India Limited (SAIL)	April 2007 to March 2010	114.96
2	Ministry of Steel	Rashtriya Ispat Nigam Limited (RINL)	April 2007 to March 2009	14.40
3	Ministry of Steel	NMDC Limited (NMDC)	April 2007 to March 2010	2.47
4	Ministry of coal	Coal India Limited (CIL)	April 2007 to March 2009	113.30
5	Department of Heavy Industries	Bharat Heavy Electricals Limited (BHEL)-	April 2007 to March 2010	36.72
6	Ministry of Petroleum and Natural Gas	Oil India Limited (OIL)	April 2007 to March 2010	29.11

7	Ministry of Petroleum and Natural Gas	GAIL (India) Limited. (GAIL)	April 2007 to March 2010	14.72
8	Ministry of Petroleum and Natural Gas	Hindustan Petroleum Corporation Limited (HPCL)	April 2007 to March 2010	10.54
9	Ministry of Petroleum and Natural Gas	Bharat Petroleum Corporation Limited (BPCL)	April 2007 to March 2010	15.55
10	Ministry of Petroleum and Natural Gas	Oil and Natural Gas Corporation Limited (ONGC)	April 2007 to March 2010	5.60
11	Ministry of Railways	RITES Limited	April 2007 to March 2010	1.07
12	Ministry of Railways	Indian Railway Catering and Tourism Corporation Limited	April 2006 to March 2010	0.51
13	Ministry of Railways	Container Corporation of India Limited	April 2006 to March 2010	1.59
14	Ministry of Railways	Fresh & Healthy Enterprises Limited	April 2006 to March 2010	0.01
15	Ministry of Railways	Dedicated Freight Corridor Corporation of India Limited	April 2007 to March 2010	0.42
16	Ministry of Railways	Rail Vikas Nigam Limited	April 2007 to March 2009	0.40
17	Ministry of Railways	IRCON International Limited	April 2006 to March 2010	1.39
18	Ministry of Railways	Railtel Corpration of India Limited	April 2006 to March 2010	0.62
Total				**363.38**

The Management of RINL, HPCL, BPCL, ONGC in their replies mainly contended that considering the spirit behind granting navaratna/mini-ratna status for PSUs, certain amount of autonomy including providing financial packages for their employees was treated as appropriate and permissible and the expenditure was very little compared to the net profit earned/ dividend paid to Government of India by the Company. The replies were not convincing as the approval given by the Boards were clear departure from DPEs guidelines and were found beyond the delegated powers of the Board.

The Management of SAIL, BHEL (HPBP & HPEP), Railway Companies in their replies contended. that in view of Section 10 (10CC) of the Income Tax Act, 1961 such payment of Income Tax on non-monetary perquisite, although paid by the Company on behalf of the employees, is not to be included in taxable income of the employee notwithstanding anything contained in Section 200 of the Companies Act, 1956. The reply is not tenable as the Supreme Court has ruled that payment of taxes to the Government can not be excluded under Section 10(10CC).

The Management of CIL contended that CIL Board in which Government and Independent Directors were also present decided to pay this amount after obtaining legal opinion. The reply is not tenable as the Management approved the payment despite different High Courts dismissing writ petitions filed by several associations on the subject.

The Ministry of Petroleum & Natural Gas contended that payment being made by GAIL on account of bearing the perquisite tax liability of its employees for various housing facilities had been kept outside the ceiling of 50 *per cent* of Basic Pay, as same is incidental to providing of residential/ leased accommodation to them. The reply is not tenable as DPE guidelines clearly list out the allowances/perks outside the purview of ceiling of 50 *per cent* of the basic pay and the list does not cover payment of tax on perquisite.

Thus, payment of perquisite tax of ₹ 363.38 crore to the employees by the Management of above PSUs was beyond the delegated powers of the Board.

Recommendation

The Administrative Ministry should ensure that the decisions taken by the Board of Directors of PSUs are as per delegation of powers and DPEs guidelines.

The matter was reported to the Ministry in February 2011; reply was awaited (February 2011).

Dredging Corporation of India Limited, Hindustan Petroleum Corporation Limited, Visakh Refinery, Rashtriya Ispat Nigam Limited

14.2 Irregular excess payment of house rent to employees

Three CPSEs irregularly paid HRA to its employees at higher rates in violation of DPE guidelines amounting to ₹ 9.38 crore during the period 1 April 2004 to 31 March 2010.

As per instructions (June 1999) of Department of Public Enterprises (DPE), House Rent Allowance (HRA), as a percentage of basic pay, was payable to the employees of central Public Sector Enterprises (CPSEs) at the rates applicable to Central Government employees based on the reclassified list of cities notified by the Government of India (GoI). In January 2001, DPE clarified that the CPSE employees would be allowed to draw the earlier rates of HRA on the revised pay wherever HRA rates were lower than the earlier rates as per new classification of cities.

Audit scrutiny of the records revealed the following:

- Rashtriya Ispat Nigam Limited (RINL) paid HRA to its non-executives stationed at Visakhapatnam at the rate of 17.5 *per cent* with effect from 1 July 2001 violating the DPE guideline as admissible rate of HRA was only 15 *per cent*. The executives were, however, paid at 15 *per cent* during 1 April 2004 to till 25 November 2008.
- Hindustan Petroleum Corporation Limited, Visakh Refinery (HPCL) paid HRA to its employees, both executives and non-executives, stationed at Visakhapatnam at the rate of 22.5 *per cent* with effect from 1 July 1997 violating the DPE guideline as admissible rate of HRA was only 15 *per cent*. Subsequently, the HRA rates were revised (June 2009) to 20 *percent* in light of the DPE Office Memorandum

(OM) dated 26 November 2008♣. The excess HRA paid (2.5 *per cent*) to the executives was recovered from the arrears on revision of pay scales. However, no recovery has been effected in respect of non-executives and they were still paid (November 2010) at 22.5 *per cent.*

- Dredging Corporation of India (DCI) paid HRA to its employees stationed at Visakhapatnam at the rate of 17.5 *per cent* with effect from 1 January 1997 violating the DPE guideline as admissible rate of HRA was only 15 *per cent.*

Thus, the payment of HRA at higher rates in violation of the DPE guidelines resulted in irregular payment of ₹ 9.38 crore (RINL- ₹ 7.46 crore, HPCL- ₹ 1.37crore and DCI- ₹ 0.55 crore) to the employees for the period from 1 April 2004 to 31 March 2010.

The Management of RINL in its reply contended (October 2009) that while revising the wage structure effective from 1 January 1997 and other benefits for non-executives, the earlier rates of HRA were considered to be retained and accordingly, Memorandum of Settlement dated 27 September 2001 was reached.

The Management of HPCL in its reply contended (April 2010) that HRA was paid at the rate of 22.5 *per cent* on basic pay as per the Corporation's housing policy applicable to Visakhapatnam in line with its pay revision for the officers for the period 1 January 1997 to 31 December 2006.

The Management of DCI in its reply contended (October 2010) that while revising the wage structures effective from 1 January 1997, the earlier rates of HRA were considered to be retained and accordingly, HRA was paid.

The contention of the Managements of RINL, HPCL and DCI are not convincing in view of the fact that the wage agreements of RINL, HPCL and DCI were signed on 27 September 2001, 26 August 2002 and 23 November 1999 respectively, that is, after DPEs OM (July 1995/ October 1996). The said DPE OM inter-alia stipulated the conditions, applicability of HRA and ceiling limits to all further wage/ pay revision settlements. As the agreements were entered into after July 1995, the employees should have been paid HRA at the rate of 15 *per cent*. However, the Managements of RINL, HPCL and DCI failed to incorporate the said ceiling limits of HRA rates in their wage/pay revision settlements.

Further, in case of companies like Bharat Heavy Electricals Limited (Tiruchirapalli) and Hindustan Shipyard Limited (Visakhapatnam), CPSEs under the Department of Heavy Industries and Ministry of Defence respectively, HRA was paid to the employees at the rate of 15 *per cent* stationed in these places, classified under B1/B2 cities as perDPE guidelines.

Thus, the Companies made irregular excess payment towards HRA amounting to ₹ 9.38 crore to their employees violating the DPE guidelines.

♣ ***Visakhapatnam was eligible for 20 per cent HRA with effect from 26 November 2008 as per classification of cities on the basis of population.***

Recommendation

The Administrative Ministry should effectively monitor implementations of conditions stipulated in DPE's guidelines in their periodic review.

The matter was reported to the Ministry in September 2010; reply was awaited (February 2011).

Bharat Heavy Electricals Limited, eight Rail Companies under Ministry of Railways

14.3 Compliance of DPE Guidelines on Perquisites and allowances by CPSEs

Introduction

The Department of Public Enterprises (DPE) acts as a nodal agency for all Central Public Sector Enterprises (CPSEs) and assists in policy formulation pertaining to the role of CPSEs in the economy as also in laying down policy guidelines on performance improvement and evaluation, financial accounting, personnel management and in related areas. Accordingly, DPE issues from time to time guidelines on the wages and allowances for employees of CPSEs.

Scope of Audit

The scope of this thematic audit was limited to examine the extent of adherence to some of the guidelines of DPE, related to perquisites and allowances of employees of CPSEs such as (i) ceiling on perquisites and allowances and (ii) encashment of earned leave in nine CPSEs namely BHEL, Container Corporation of India Limited (CONCOR), RITES Limited (RITES), Rail Vikas Nigam Limited (RVNL), IRCON International Limited (IRCON), Railtel India Corporation Limited (RCIL), Indian Railway Catering and Tourism Corporation Limited (IRCTC), Kutch Railways Corporation Limited (KRCL) and Fresh & Healthy Enterprises Limited (FHEL) and (iii) guidelines on residential accommodation and recovery of rent thereof in the above mentioned eight CPSEs under Ministry of Railways over the last few years.

Audit Objectives

Objective of this audit was to make an assessment of extent of adherence to DPE guidelines relating to perquisites and allowances by the nine CPSEs mentioned under scope.

Audit Criteria

Guidelines relating to perquisites and allowances issued by DPE from time to time, internal policies of the Companies on pay and allowances, agenda/minutes of meetings of Board of Directors of the companies were used as benchmark for arriving at the audit conclusions.

Audit Findings

14.3.1 Ceiling on perquisites and allowances

The DPE while issuing (25 June, 1999) guidelines for pay revision of employees of CPSEs with effect from 1 January, 1997 stipulated therein a ceiling of 50 *per cent* of the basic pay on payments made to employees towards perquisites and allowances. The

above guidelines also stipulated that payments over and above the ceiling of 50 *per cent* of the basic pay were required to be entirely in the nature of Performance Related Payments and put a further ceiling of five *per cent* of the distributable profits of an enterprise which could be utilised towards such payments. The DPE further on 27 March 2000 clarified that basic pay (BP), dearness allowances (DA), house rent allowance (HRA) /leased accommodation, city compensatory allowance (CCA) and professional allowances like non practicing allowance/non teaching/ location allowance/ difficult area positing allowance and retiral benefits etc. were outside the purview of the ceiling of 50 *per cent* of basic pay. All other allowances including Performance Linked Incentives (PLI), Domiciliary Medical Expenses would be within 50 *per cent* ceiling of perquisites (i.e. 50 *per cent* of basic pay).

Audit observed (August 2010) that BHEL incurred an excess expenditure of ₹ 359.55 crore ***(Annexure-VIII),*** in contravention of above guidelines during the period 2001-02 to 2008-09 on perquisites and allowances (excluding different incentive payments, canteen subsidy, tax on housing perquisites and subsidy to education institutions) for executives and non unionised supervisors. As the Management showed (December 2010) its inability in providing data relating to expenditure incurred on basic pay and perquisites and allowances of executives and supervisors for the year 2009-10, the audit was unable to comment on the same.

The Management stated (September 2010) that (i) DPE guidelines dated 25 June 1999 read with clarification dated 27 March 2000 were applicable for revision of pay scales with effect from 1 January 1997 to 31 December 2006, hence were not applicable for the financial year 2007-08 and onwards, (ii) concept of perquisites and allowances to the tune of 50 *per cent* was made applicable for all classes of employees and not exclusively for executives and supervisors as observed by audit and (iii) some of the benefits, namely medical expenses, payment to empanelled doctors, other expenses on medical facilities etc. were in the nature of social overheads and as such not required to be included in perks and allowances.

The reply was not acceptable as the aforesaid guidelines of June 1999 did not contain any fixed period during which these were to remain effective. As DPE also did not revise these guidelines they were still (February 2011) in force. It is a fact that these guidelines were applicable to all classes of employees, however, the audit observation is focussed on the perquisites and allowances of executives and non unionised supervisors. Further, the contention of the Management to consider some of the perquisites and allowances as social overheads being not in line with DPE's clarification dated 27 March, 2000, hence was not acceptable.

As regards companies under Ministry of Railways, no such issue was observed in any of the eight companies selected for audit.

14.3.2 Residential accommodation and recovery of rent thereof

DPE's instructions issued in March 1992 stipulated that wherever leased accommodation was provided by the CPSEs to their executives, rent at the rate of 10 *per cent* of the basic pay was to be recovered. In respect of township accommodation arranged by CPSEs, the recovery was to be made at 10 *per cent* of the basic pay or the standard rent whichever was lower. After revision of pay scales of employees of CPSEs with effect from January 1997, DPE clarified (June 1999) that the rent recovery on revised pay would be computed

at the percentages in practice before 1 January 1997 or on the basis of standard rent to be fixed by the Companies.

Audit observed (July 2010 to September 2010) that in respect of the leased accommodation provided to employees, CONCOR, RITES, RVNL, IRCON, RCIL KRCL, IRCTC and FHEL were recovering rent at the slab rates fixed by them and not at the rate of 10 *per cent* of the basic pay, as stipulated vide DPE instructions resulting in short recovery of rent of ₹ 6.61crore as under:

Sl. No.	Name of CPSE	Amount short recovered (₹ in crore)	Information made available to Audit for	
			Whole company/Unit	Period
1	RITES	2.30	Company as a whole	April 2007 to March 2010
2	CONCOR	0.24	Corporate Office only	April 2009 to March 2010
3	IRCON	2.63	Company as a whole	April 2007 to March 2010
4	RVNL	0.21	Corporate Office only	March 2010 only
5	RCIL	0.22	-do-	April 2007 to March 2010
6	KRCL	0.02	Company as a whole	-do-
7	IRCTC	0.93	-do-	-do-
8	FHEL	0.06	-do-	-do-
TOTAL		**6.61**		

The Management of IRCON, IRCTC and CONCOR stated (August and November 2010) that DPE in its OM dated 25 June, 1999 instructed that rent recovery on revised pay would be computed from the date of implementation of the guidelines at the percentages in practice before 1 January 1997 or on the basis of standard rent to be fixed by the Companies. The Management of these Companies further contended that in line with the above instructions of DPE the standard rent fixed for various classes of employees were got approved from their respective Boards and recovery of rent from employees was being made accordingly.

The reply was not acceptable as the standard rent was applicable only in case of accommodations owned by these Companies. However, in case of leased accommodation, which was the subject matter of the audit observation, house rent at the rate of 10 *per cent* was to be recovered from the employees in terms of DPE instructions issued from time to time. The DPE further made it clear recently (December 2010) that wherever accommodation was arranged by a PSE by taking the premises on lease basis, the rent would be recovered by the PSE from the executives including the incumbents of the top posts at 10 *per cent* of the revised basic pay. As such contention of the Management of these companies that the recovery was to be made from the employees as per standard rent fixed by them, was not acceptable.
Reply of RITES, RVNL, RCIL, KRCL and FHEL was awaited (February 2011).

14.3.3 Encashment of earned leave

According to the DPE instructions of April 1987, an individual public enterprise may frame leave rules for its employees keeping the broad parameters of the policy guidelines laid down in this respect by the Government of India (GOI). CONCOR and FHEL adopted 26 days as a month for the purpose of computing earned leave encashment instead of 30 days though no such provision existed in the Central Civil Service (Leave Rules), 1972. DPE issued (December 2008) instructions to these Companies that they

should adopt 30 days month for the purpose of calculating leave encashment. The DPE also advised (December 2008) administrative Ministries/Departments concerned with PSEs to adopt 30 days as month for the purpose of leave encashment. However, violating the instructions of DPE, these companies continued to adopt 26 days a month instead of 30 days for the purpose of leave encashment. Resultantly, excess payment of ₹ 0.59 crore was made to the employees of the two companies between April 2003 and March 2010.

The Management of CONCOR stated (March 2010) that guidelines of DPE were subject to broad parameters of policy guidelines and such guidelines neither have any intention nor authority and jurisdiction to override the statutory provisions otherwise provided in various laws. It further stated that monthly wages in respect of workmen under various labour laws is exclusive of weekly rest. Minimum Wages Act, 1948 and Payment of Gratuity Act, 1972 define wages therein for 26 days.

The reply of the Management was not acceptable as DPE being the nodal department for CPSEs, its guidelines were applicable to these CPSEs. DPE's instructions (December 2008) reiterated that the companies should adopt 30 days month for the purpose of calculating leave encashment. The DPE further clarified vide its letter dated 8 December 2010 to Ministry of Railways (Railway Board) that definition of a month may differ under different labour laws, but for the purpose of encashment of earned leave it is to be treated as 30 days.

Reply from FHEL was awaited (February 2011).

In case of the remaining six railway companies, no such issue was observed. As regards BHEL, the issue was already highlighted vide Para 11.1.2 of Report No. 11 of 2007. The Management of BHEL stated (September 2010) that pending judicial decision in major units of the Company, effecting the change in respect of workmen who joined prior to 1 January 2010 was not possible. However, the Company effected 30 days month in case of employees who joined on or after 01 January 2010.

Conclusion

In violation of DPE Guidelines, the companies incurred excess expenditure of ₹ 366.75 crore on payment of perquisites and allowances to their employees.

Recommendation

The companies should approach DPE before deviating from Guidelines on wages and allowances to employees.

The matter was reported to the Ministry in October 2010; reply was awaited (February 2011).

Bharat Heavy Electricals Limited, Bharat Earth Movers Limited, Bharat Sanchar Nigam Limited, Food Corporation of India, Hindustan Paper Corporation Limited, The New India Assurance Company Limited and United India Insurance Company Limited

14.4 Recoveries at the instance of Audit

During test check, several cases relating to non-recovery, short recovery, non-billing of rentals, excess payment, short charging of premium etc. by central public sector undertakings

(PSUs) were pointed out. In 14 such cases pertaining to 7 PSUs, Audit pointed out that an amount of ₹ 7.85 crore was due for recovery. The Management of PSUs had recovered an amount of ₹ 7.21 crore during the year 2009-10 as detailed in ***Appendix-I.***

Bharat Heavy Electricals Limited, Food Corporation of India, MECON Limited, Rashtriya Chemicals and Fertilizers Limited and Steel Authority of India Limited

14.5 Corrections/rectifications at the instance of Audit

During test check, cases relating to deficiencies in the systems, policies and procedures etc were observed and brought to the notice of the Management. Details of cases where the changes were made by the Management of the PSUs in their policies/procedures at the instance of audit are given in ***Appendix-II***.