

Compliance with DPE Guideline

5.1 Introduction

The Bureau of Public Enterprises (BPE) was set up in 1965 to provide policy and overall guidance to the Central Public Sector Enterprises (CPSEs) and act as a centralized coordinating unit facilitating continuous appraisal of the performance of CPSEs. In May 1990, BPE was conferred the status of a full-fledged Department and is now known as the Department of Public Enterprises (DPE) in the Ministry of Heavy Industries and Public Enterprises.

Role of DPE in issuing guidelines/directives to CPSEs

- The directions/ instructions are given to CPSEs through Presidential Directives as well as Guidelines issued by Administrative Ministries or DPE.
- **Presidential Directives** are issued by the Administrative Ministries to the concerned CPSEs whenever the situation so warrants and are **mandatory** in nature. For the purpose of maintaining uniformity, such Directives are to be issued in consultation with the DPE if these relate to single CPSE and with the concurrence of the DPE if these are applicable to more than one CPSE.
- **Guidelines** could be issued either by the Administrative Ministries or the DPE as the case may be and are **advisory** in nature. The Board of Directors of the CPSEs will have the discretion not to adopt these guidelines for reasons to be recorded in writing. The Board Resolution on the subject giving the reasons therein is to be forwarded both to the Administrative Ministry concerned as well as to the DPE.

5.2 Non-compliance with DPE guidelines

DPE formulates policy guidelines pertaining to CPSEs in areas like performance improvements and evaluation, financial management, personnel management, Board structures, wage settlement, training, industrial relation, vigilance, performance appraisal, etc.

Instances were noticed in Audit wherein the CPSEs had not complied with guidelines issued by DPE. There were seven and four Audit Paragraphs, included in the CAG's Audit Report No.13 of the year 2013 & 2014 respectively wherein DPE guidelines were violated. These are summed up in the following table:

Sl. No.	Subject Area	Number of			₹ in crore)		No. of cases in which violation continues	₹ in crore)
		Audit Paras	CPSEs	Cases	Monetary Value	Recovery of irregular payment		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
AR No 13 of 2013								
1	Irregular encashment of half pay leave and sick leave	1	20	20	413.98	0.28	2	90.18
2	Irregular encashment of casual leave and optional holidays	1	1	1	20.32	NIL	NIL	NIL
3	Excess payment of Performance related pay	4	4	6	489.14	Nil**	Nil^^	31.04"
4	Irregular payment of incentive	1	1	1	25.98	Nil	Nil	Nil
AR No 13 of 2014								
5	Irregular encashment of Earned leave, Half pay leave, Sick leave	1	5	5	138.58	The report was placed in the Parliament on 1 August 2014. ATNs are still being received/processed.		
6	Employer's share of EPF contribution	1	7	7	23.42			
7	Irregular payment of Performance related pay	1	5	5	202.95			
8	Irregular encashment of Casual leave	1	1	1	12.43			
Total		11	44	46	1326.8	0.28	2	120.92

**ATN has not been received for SAIL and for PFC no remark was offered in this respect in the ATN.

^^ ATN has not been received for SAIL and for PFC no remark was offered in this respect in the ATN

"ATN has not been received in respect of SAIL.

5.3 Status of 'Follow-up' on non compliance

Audit reviewed the Action Taken Notes (ATNs) submitted by CPSES/ Administrative Ministries on the Audit Paragraphs indicated above. The review revealed that though some CPSEs recovered very small percentage of irregular payment made and some discontinued such irregular payments for future, many of the CPSEs still continued to make irregular payments as detailed below:

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5.3.1 Irregular encashment of half pay leave & sick leave

Government of India allowed encashment of half pay leave (HPL) and earned leave (EL) put together within the overall ceiling of 300 days with effect from 1 January 2006, on superannuation, which was an enhancement to the earlier ceilings on encashment of EL up to 240 days. In addition to DPE instructions of April 1987* requiring CPSEs to frame leave rules keeping broad parameters of the policy guidelines laid in this regard by Gol, DPE also required them to follow the overall ceiling of 300 days for encashment of EL and HPL for their employees on retirement. Further, in a clarification of 17 July 2012[†], DPE reiterated that sick leave could not be encashed though EL and HPL could be encashed subject to overall limit of 300 days. Audit observed that these DPE guidelines were violated by 20 CPSEs and an amount of ₹ 413.98 crore was irregularly paid.

Audit further observed that only three CPSEs recovered ₹ 0.28 crore of the irregular payment and made a subsequent irregular payment of ₹ 90.18 crore and the violation continues in two CPSEs.

5.3.2 Irregular encashment of casual leave and optional holidays

DPE has not issued any specific instructions/guidelines permitting encashment of casual leave and optional holidays but in a clarification on the issues raised by Ministry of Shipping, DPE stated (October 2010[‡]) that casual leave must not be encashed at all and that it must lapse at the end of the calendar year. Audit observed that one CPSE had encashed casual leave before the issue of this clarification and had made payment of ₹ 20.32 crore on this account.

Audit further observed that the CPSE discontinued the scheme to comply with the DPE clarification but did not recover any amount already paid.

5.3.3 Excess payment of Performance related pay

- a. While clarifying on the elements of Profit Before Tax (PBT) for computation of performance related pay (PRP), DPE recommended (November 2008[§]) that 'the profit of CPSE is expected to come out from the specified objective and core activity and that extra ordinary items like valuation of stock, grant waived by Government, sale of land, etc. (list of items is not exhaustive) will not be included in calculation of PBT as far as performance related pay is concerned'. Audit observed that this recommendation was violated by two CPSEs and an amount of ₹ 49.29 crore for the PRP was irregularly paid.

Audit further observed that the CPSEs did not recover the irregular payment and made a subsequent irregular payment of ₹ 6.30 crore.

- b. i) DPE guidelines of 26 November 2008 permitted PRP by CPSEs subject to a maximum ceiling of 5 *per cent* of distributable profits of an enterprise. These guidelines introduced a maximum ceiling slabs ranging from 40 to 70 *per cent* of basic pay of executives below Board level and 100 *per cent* to 200 *per cent* of the basic pay for Board level executives for PRP and this was in addition to the overall maximum ceiling of five *per cent* of

* OM No.2 (27) 85-BPE(WC) dated 24 April 1987

† OM No.2 (14)/2012-DPE (WC) dated 17 July 2012

‡ O.M. No.2(32)/10-DPE (WC) GL-XXIII/2010 dated 26 October 2010

§ OM No. 2 (70)/08-DPE (WC)-GL-XVI/08 dated 26 November 2008

distributable profits of an enterprise. Audit observed that this recommendation was violated by one CPSE and an amount of ₹ 20.52 crore for PRP was irregularly paid.

Audit further observed that the CPSE did not recover the irregular payment and made a subsequent irregular payment of ₹ 22.53 crore.

ii) DPE in November 2008 permitted CPSEs to follow 'Cafeteria Approach' allowing executives to choose from a set of perquisites and allowances other than House Rent Allowance and leased accommodation subject to a maximum ceiling of 50 *per cent* of basic pay. Audit observed that one CPSE violated this recommendation and extended benefit in respect of interest subsidy on housing loans to executives which was beyond the maximum ceiling of 50 *per cent* of basic pay of executives aggregated to ₹ 1.11 crore.

Audit further observed that the CPSE did not recover the irregular payment and made a subsequent irregular payment of ₹ 2.21 crore.

- c. i) DPE guidelines dated 26 November 2008 and 9 February 2009* required CPSEs to have a robust and transparent performance management system and adopt a 'Bell Curve Approach' in grading the executives so that no more than 10 to 15 *per cent* are graded as Outstanding/Excellent and 10 *per cent* of executives should be graded as 'Below Par' and no PRP is to be paid to those achieving 'below par' rating. One CPSE violated these guidelines and an amount of ₹ 87.45 crore was irregularly paid.

Audit further observed that the CPSE did not recover the irregular payment but made no subsequent irregular payment.

ii) DPE guidelines prescribe the basic formula for PRP payable to an executive. Audit observed that one CPSE adopted a PRP formula wherein the multiplier for the weightage of Executive Performance Rating (EPR) exceeded the DPE prescribed limit which was irregular and made excess payment to executives totalling ₹ 232.16 crore.

Audit further observed that the CPSE did not recover the irregular payment but made no subsequent irregular payment.

- d. DPE guidelines of 26 November 2008 and 2 April 2009† provide that perks and allowances admissible to executives is subject to a maximum ceiling of 50 *per cent* of the basic pay, CPSE may also follow 'Cafeteria Approach'. Further, if CPSE has created infrastructure facilities, these should be monetized for the purpose of computing the perks and allowances and for the purpose of reckoning the value of infrastructure facilities, the recurring expenditure alone would be taken into account and should be restricted to 10 *per cent* of basic pay of all executives and non-unionised supervisors within the overall limit of 50 *per cent* of basic pay. Audit observed that one CPSE violated these guidelines and made irregular payment of ₹ 98.61 crore towards performance related pay.

Action Taken Note on the above para has not been received.

5.3.4 Irregular payment of incentive

DPE had issued (November 1997) instructions to all CPSEs which stated that the employees of CPSEs would not be paid bonus, *ex gratia*, honorarium, reward and special incentives, etc.

* OM No. 2 (70)/08-DPE (WC)-GL-IV/09 dated 9 February 2009

† OM No. 2 (70)/2008-DPE (WC)-GL-VII/09 dated 2 April 2009

unless the amount was authorized under a duly approved incentive scheme. The guideline was violated by one CPSE which made payment of a one-time financial incentive, based on the pay scales of workmen and grades of officers, on the occasion of completing a project but included not only the employees actually engaged for the project but all others across the company. Audit observed that the payment of financial incentive of ₹ 25.98 crore was not covered under an approved scheme and was in addition to the payment made to the Executives under PRP Scheme and incentives paid to the workmen and was therefore irregular.

Audit further observed that the CPSE did not recover the irregular payment made to the employees on account of one time financial incentive.

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5.3.5 Irregular encashment of Earned leave, Half pay leave, Sick leave

Gol allowed encashment of half pay leave (HPL) and earned leave (EL) put together within the overall ceiling of 300 days with effect from 1 January 2006, on superannuation, which was an enhancement to the earlier ceilings on encashment of EL up to 240 days. In addition to DPE instructions of April 1987* requiring CPSEs to frame leave rules keeping broad parameters of the policy guidelines laid in this regard by Gol, DPE also required them to follow the overall ceiling of 300 days for encashment of EL and HPL for their employees on retirement. Further, in a clarification of 17 July 2012†, DPE reiterated that sick leave could not be encashed though EL and HPL could be encashed subject to overall limit of 300 days.

Audit observed that five CPSEs violated these DPE guidelines and an amount of ₹ 138.58 crore was irregularly paid.

BHEL has stated in ATN that it had taken remedial action to comply with the guidelines but information of any subsequent irregular payment or recovery is not available. Action taken note (ATN) has not been received from four‡ CPSEs.

5.3.6 Employer's share of EPF contribution on leave encashment

Contribution to EPF includes employer's contribution at the rate of 12 *per cent* of the basic wages, dearness allowance and retaining allowance (if any) paid to an employee and an equivalent amount is recovered from employee's salary. On the issue of whether the amount of leave encashment paid to employees is to be reckoned as part of basic wages or not, Bombay High Court (September 1994) and Karnataka High Court (October 2003) held that leave encashment is to be reckoned as part of basic wages for the purpose of contribution to EPF. Hon'ble Supreme Court (12 March 2008) decided that basic wage was never intended to include amounts received for leave encashment and if any payment has already been made then it has to be adjusted for future liabilities and there shall be no refund and EPFO issued instructions on the same lines in May 2008. Audit observed that seven CPSEs either continued to make contribution to EPF on the amount of leave encashment or did not adjust the amount already paid against future liabilities. These CPSEs made irregular contribution of ₹ 23.42 crore and did not adjust contributions amounting to ₹ 38.70 crore made prior to the judgement.

Power Finance Corporation had recovered/adjusted ₹ 21.18 lakh out of ₹ 22.86 lakh to be recovered. BHEL has discontinued PF deduction on leave encashment from date of judgement and sought legal opinion on recovery of amount already paid. However, reply from Ministry is

* OM No.2 (27) 85-BPE(WC) dated 24 April 1987

† OM No.2 (14)/2012-DPE (WC) dated 17 July 2012

‡ NALCO, HUDCO, GAIL and IOCL

awaited. NHPC has stated that it has discontinued the practice but recovery of employer's contribution from separated employees may not be feasible. ATN has not been received in respect of four* CPSEs.

5.3.7 Irregular payment of Performance Related Pay

DPE issued instructions in November 2008[†] and clarifications in November 2010 and July 2011 laying down conditions for payment of PRP: i) Each CPSE shall adopt a 'Bell Curve Approach' in grading the executives so that no more than 10 to 15 *per cent* are graded as Outstanding/Excellent and 10 *per cent* of executives should be graded as 'Below Par' and no PRP is to be paid to those achieving 'below par' rating, ii) Introduced a maximum ceiling slabs ranging from 40 to 70 *per cent* of basic pay for executives below Board level and 100 *per cent* to 200 *per cent* of the basic pay for Board level executives for PRP and this was in addition to the overall maximum ceiling of five *per cent* of distributable profits of an enterprise, iii) Profit Before Tax (PBT) for computation of performance related pay (PRP) was to come out from the specified objective and core activity and that extra ordinary items like valuation of stock, grant waived by Government, sale of land, etc. (list of items is not exhaustive) shall not be included in calculation of PBT. Audit observed that five CPSEs violated these guidelines and made irregular payment of ₹ 202.95 crore towards PRP.

ATN received from Rural Electrification Corporation limited states that it has not provided for a budget for the payment of Baseline Compensation in the budget provision for FY 2014-15. ATN has not been received from four[‡] CPSEs.

5.3.8 Irregular encashment of Casual leave

DPE stated (October 2010[§]) that casual leave must not be encashed at all and that it must lapse at the end of the calendar year. Audit observed that Hindustan Aeronautics Limited violated these guidelines and made irregular payment of ₹ 12.43 crore towards such violation.

ATN has not been received from Hindustan Aeronautics Limited.

Department of Public Enterprises conveyed (April 2015) that while the cases referred above were to be dealt by the concerned Administrative Ministry, DPE on its part has a mechanism to ensure compliance of its guidelines by way of obtaining a certificate to this effect from the CPSEs. It was further informed that DPE has made changes in the Memorandum of Understanding guideline to incorporate negative marking for non-compliance of DPE guidelines.

5.4 Directives of Parliamentary Standing Committee on Industry

Department-related Parliamentary Standing Committee on Industry in its 216th Report, presented before Parliament on 19 April 2010, recommended that "in order to play a meaningful and effective role in getting the policies and guidelines implemented by the CPSEs, DPE should ask for the Compliance Report from the CPSEs about the implementation of the policies and guidelines formulated by it from time to time and separate paragraph thereon may be incorporated in the "Annual Report of DPE".

* NTPC, PGCIL, THDC and SJVN

[†] OM No. 2 (70)/08-DPE (WC)-GL-XVI/08 dated 26 November 2008

[‡] ONGC, MECON Limited, BHEL and Bharat dynamics Limited

[§] O.M. No.2(32)/10-DPE (WC) GL-XXIII/2010 dated 26 October 2010

Accordingly, in July 2010 and June 2011, DPE requested Administrative Ministries to furnish reports regarding compliance of its guidelines by CPSEs by June of every year. DPE introduced compliance with a few of its guidelines as one of the parameters in MoUs of 2012-13, with mandatory weight of five. However, as per the MoUs guidelines of 2013-14, the compliance will not be a mandatory parameter, but Task Force will have liberty to impose penalty of negative marks up to five depending on degree/ seriousness of non-compliance.

5.5 Recommendation:

While it is the responsibility of the respective Administrative Ministry/Department to ensure that DPE guidelines are followed by the CPSEs under their jurisdiction, in letter and spirit, in view of the continuous and recurring instances of non-compliance of DPE guidelines being reported in CAG's Audit Reports, a dedicated mechanism either in the Ministry of Finance or DPE may be instituted so that all issues of non-compliance are addressed through regular and critical review.