

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

8. Following significant instances of irregularities in payment of various entitlements and allowances to the employees of CPSEs were noticed in audit:

Oil and Natural Gas Corporation Limited, Hindustan Petroleum Corporation Limited, Bharat Petroleum Corporation Limited, GAIL (India) Limited, Indian Oil Corporation Limited and Engineers India Limited

8.1 Irregular payment towards encashment of Half Pay Leave/Earned Leave/Sick Leave as well as employer's share of EPF contribution on leave encashment

Encashment of half pay leave/sick leave/earned leave in deviation from DPE guidelines, resulted in irregular payment of ₹ 157.91 crore. Further, CPSEs made irregular contributions of ₹ 12.15 crore on account of provident fund in respect of leave encashment to employees in violation of the judgment (March 2008) of Hon'ble Supreme Court of India and instructions of Employees Provident Fund Organization. Further, one CPSE did not adjust the employer's share of contribution amounting to ₹ 14.94 crore on leave encashment paid prior to March 2008.

In line with the Department of Personnel & Training, GOI guidelines (October 1997) enhancing the ceiling for accumulation of Earned Leave (EL) to 300 days for Central Government employees, DPE allowed (August 2005) enhanced accumulation of EL up to 300 days for the employees of CPSEs. On a reference made by the Ministry of Shipping, DPE clarified to all the CPSEs on 26 October 2010 that employees of CPSEs were not permitted to accumulate EL for more than 300 days and CPSEs are not permitted to encash leave beyond 300 days at the time of retirement of its employees.

In September 2008, GOI allowed consideration of both EL and Half Pay Leave (HPL) for encashment for Central Government employees with effect from January 2006, subject to a limit of 300 days for both kind of leave taken together. In a further clarification of 17 July 2012, DPE referred to its instructions of April 1987 and reiterated that on retirement for CPSEs employees, EL and HPL could be considered for encashment subject to an overall limit of 300 days and that cash equivalent payable for HPL would be equal to leave salary as admissible for half pay plus dearness allowance and commutation of HPL would not be permissible to make up the shortfall in case EL to the credit of a CPSE employee was less than 300 days. Further, GOI guidelines do not permit encashment of sick leave, which has been reiterated by GOI in December 2012 and February 2014 also.

A. Audit observed that the following CPSEs deviated from the DPE guidelines and made irregular payment of ₹ 157.91 crore to their employees towards HPL/EL encashment on superannuation/separation over and above the ceiling of 300 days.

Administrative Ministry	Name of CPSE	Period	₹ in crore
Ministry of Petroleum and Natural Gas	Oil and Natural Gas Corporation Limited	April 2007 to March 2013	110.76
	Hindustan Petroleum Corporation Limited		10.39
	Bharat Petroleum Corporation Limited		17.64
	Engineers India Limited	April 2006 to March 2014	19.12
Total			157.91

ONGC stated (September 2013) that instructions issued by the Government are not automatically applicable to ONGC and being a Maharatna PSU, it was empowered to structure and implement schemes relating to personnel and human resource management, training, voluntary retirement schemes, *etc.* In view of this delegation of powers, ONGC Board is competent to introduce schemes relating to personnel and human resource schemes like Good Health Reward Scheme.

HPCL stated (January 2014) that unless otherwise specifically stated, the instructions and provisions pertaining to holidays and Leave Rules in Central Government offices/ establishments are not *ipso facto* applicable to Industrial DA pattern CPSEs. HPL policy in HPCL is administered only on medical grounds.

BPCL in its reply (October 2013) stated that encashment of HPL was introduced to ensure uninterrupted supply of petroleum products to customers by avoiding absenteeism towards the end of the year or at the time of retirement merely with the intention of exhausting the leave. It also served as a reward for employees to maintain good health and who did not need to take 'full pay' sick leave, thereby facilitating round-the-clock working.

EIL stated (September 2014) that the provision regulating sick leave and its encashment at the time of superannuation is arising out of the operational needs and work requirement of the organization and was framed under the provisions of empowerment/flexibility to CPSEs for framing Leave Rules under the DPE Circular dated April 1987. It further added that nowhere till December 2012, it was mentioned that sick leave/half pay leave cannot be encashed at the time of superannuation. Even in GoI at the time of superannuation, commuted leave is encashable as a good health reward and the same subsequently along with earned leave has been limited to a ceiling of 300 days.

Replies are not acceptable as leave encashment beyond the overall policy of GoI was not permitted as per DPE instructions of April 1987. Further, DPE's circular of 26 October 2010 clarified that CPSEs were not permitted to encash leave beyond the overall ceiling of 300 days. In another clarification issued in July 2012, referring to instructions of April 1987, DPE reiterated that EL and HPL could be considered for encashment on superannuation subject to overall limit of 300 days. Moreover, clarification issued by

DPE in July 2012 specifically disallowed encashment of sick leave. Further, the contention that even in GoI service, commuted leave is encashable as a good health reward is not factually correct as in GoI Service, only leave on half pay (HPL) is permitted to be encashed to the extent the encashment of Earned Leave at superannuation falls short of prescribed ceiling of 300 days and HPL is not allowed to be commuted for the purpose of encashment.

Therefore, encashment of HPL to employees on retirement/separation beyond the overall ceiling of 300 days was in violation of DPE guidelines and was, thus, irregular.

The matter was reported to Ministry of Petroleum and Natural Gas (MOPNG) in September 2013, reply relating to irregular payment in case of HPCL and BPCL was awaited (January 2015), while MOPNG endorsed the view of ONGC in July 2014.

B. As per Employees' Provident Fund (EPF) and Miscellaneous Provisions Act, 1952, contribution to EPF included 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 towards employee's contribution which was to be recovered from the employees' salary. The question whether the amount of leave encashment paid to employees was to be reckoned as part of basic wages was contested by different stakeholders in various courts at various points of time. Bombay High Court¹ (September 1994) and the Karnataka High Court² (October 2003) held that leave encashment was to be reckoned as part of basic wages for the purpose of contribution to EPF. Employees Provident Fund Organization (EPFO) also advised (9 September 2005) its field offices to enforce the recovery of EPF contribution on leave encashment. On subsequent adjudication of the dispute, Supreme Court decided³ (12 March 2008) that "basic wage was never intended to include amounts received for leave encashment" and directed that, "if any payment has already been made, it can be adjusted for future liabilities and there shall not be any refund claim since the fund is running one". In view of the judgment of Supreme Court *ibid*, EPFO conveyed (May, 2008) to all its field offices to discontinue provident fund contribution on leave encashment with immediate effect and where provident fund contribution of the employer's share had been received; the same should be adjusted against future liabilities.

Audit observed that GAIL (India) Limited continued to make employer's contribution to employees provident fund on the amount of leave encashment amounting to ₹ 5.28 crore till November 2009 and also did not adjust the employer's share of contribution on leave encashment already paid prior to March 2008. Similarly, Indian Oil Corporation Limited also continued to make employer's contribution on leave encashment amounting to ₹ 6.87 crore till March 2009 and did not adjust the employer's share of contribution amounting to ₹ 14.94 crore on leave encashment already paid from 2005-06 to 2007-08 in respect of serving employees.

¹ *In the case of Hindustan Lever Employees' Union vs. Regional Provident Fund Commissioner (RPFC)*

² *In the case of Manipal Academy of Higher Education vs. Provident Fund Commissioner*

³ *In case of Manipal Academy of Higher Education vs. Provident Fund Commissioner-Appeal (Civil) No. 1832 of 2004*

IOCL stated (December 2014) that no communication from Regional Provident Fund Commissioner (RPFC) was received by the Company and only on enquiry from EPFO, decision came to the knowledge of the Company. Implementation of any such change/decisions can be best implemented prospectively and accordingly provident fund deduction on leave encashment was discontinued from 1 April 2009.

GAIL stated (November 2014) that only during discussion with peer organizations, the communication issued by Regional Provident Fund Commissioner (RPFC) came to its knowledge. Thereafter, the Company sought clarification from EPFO and the RPFC concerned on the applicability of this communication/clarification to the Company, an exempted establishment. The clarification was received in November 2009 and accordingly provident fund deduction on leave encashment was discontinued from 1 December 2009.

Replies are not tenable as the decision of Hon'ble Supreme Court as well as instruction of May 2008 of EPFO to discontinue provident fund contribution on leave encashment were applicable with immediate effect and had also mandated adjustment of excess contributions already made against future liabilities. It was not open to the Company to postpone the applicability of EPFO directions and to avoid adjustment of the excess contributions already made.

Thus, payment of provident fund contribution amounting to ₹ 12.15 crore during April 2008 to November 2009 on leave encashment and non-adjustment of contributions made prior to March 2008 was in violation of judgment of Hon'ble Supreme Court and was, therefore, irregular.

Steel Authority of India Limited, National Highways Authority of India, National Building Construction Corporation of India Limited and National Projects Construction Corporation Limited

8.2 Recoveries at the instance of Audit

In five cases pertaining to four CPSEs, audit pointed out an amount of ₹ 28 crore that was due for recovery. The management of CPSEs had recovered an amount of ₹ 27.59 crore (98.5 per cent) during the period 2013-14 as detailed in **Appendix-I**.

Instrumentation Limited, Steel Authority of India Limited and Ferro Scrap Nigam Limited

8.3 Corrections/rectifications at the instance of audit

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