

CHAPTER – X

Central Public Sector Enterprises

10.1 Department of Atomic Energy

10.1.1 Irregular payment on leave encashment

Encashment of Half Pay Leave/Sick Leave in deviation from DPE guidelines, resulted in irregular payment of ₹ 10.53 crore during 2013-14 to 2016-17.

As per instructions issued by the Department of Public Enterprises (DPE) in April 1987, individual Central Public Sector Enterprises (CPSEs) may frame leave rules for its employees within the broad parameters of the policy guidelines laid down by the Government of India (GoI).

GoI allowed Half Pay Leave (HPL) and Earned Leave (EL) to be considered for encashment of leave on superannuation within the overall ceiling of 300 days with effect from 1 September 2008. In terms of DPE instructions of April 1987 *ibid*, CPSEs were required to follow the overall ceiling of 300 days for encashment of EL and HPL for their employees on retirement.

On 17 July 2012, DPE clarified that sick leave could not be encashed and EL and HPL could be considered for encashment of leave on retirement subject to the overall limit of 300 days. These clarifications were reiterated on 17 December 2012 and 7 February 2014.

Indian Rare Earths Limited (IREL) deviated from the DPE guidelines on leave encashment and made irregular payments of ₹ 10.53 crore during 2013-14 to 2016-17 to their employees on account of encashment of sick leave, excess payment of encashment of EL/HPL over and above the ceiling of 300 days and payment of Dearness Allowance (DA) at full pay on encashment of HPL instead of admissible DA rate on half the rate of pay last drawn.

The company replied (July 2017) that the benefit of encashment of HPL and sick leave had been framed and implemented more than 30 years ago and had become part and parcel of the service conditions of the employees. It added (October 2017) that rules framed by GoI regarding credit as well as encashment of EL, HPL and sick leave are not applicable to IREL. The Board of Directors had decided (7 February 2013) to (i) continue with the existing rule of the company with respect to encashment of EL/HPL/Sick Leave to all employees on rolls of the company and (ii) frame rules for new entrants regarding encashment of EL/HPL/Sick Leave including maximum

number of days to be allowed for encashment on retirement as per DPE clarifications. Further after being pointed out by the Audit, company, however, revised (June 2017) the method of HPL encashment with immediate effect by allowing admissible DA on half the rate of pay last drawn.

The reply of the company is not tenable since leave encashment beyond the parameters of the policy guidelines of Gol was not permitted as per DPE instructions of April 1987. Further, DPE had specifically clarified (July 2012) that since Government guidelines do not permit encashment of sick leave, the same cannot be encashed by CPSEs and encashment of EL and HPL could be considered for encashment of leave on retirement subject to the overall limit of 300 days. Thus, encashment of sick leave, incorrect computation of DA in HPL encashment and encashment of EL and HPL on retirement beyond the overall ceiling of 300 days in respect of employees who joined before 6 February 2013 was in violation of DPE guidelines and the payment of ₹ 10.53 crore made during period 2013-14 to 2016-17 was irregular.

The matter was reported to the Ministry in September 2017; their reply was awaited (December 2017).

10.1.2 Additional burden of Income Tax/Minimum Alternate Tax due to non-renewal of Bulk Power Supply Agreement

The Company had to bear an additional burden on account of Income Tax/ Minimum Alternate Tax of ₹ 4.60 crore due to non-renewal of Bulk Power Supply Agreement with KSEB duly incorporating the provisions for recovery of incidence of income tax.

M/s. Nuclear Power Corporation of India Limited (Company) entered (December 2000) into a Bulk Power Supply Agreement (BPSA) for sale of power generated by its Kaiga Generating Station (KGS) Unit I & II with the Kerala State Electricity Board (KSEB) and four other Bulk Power Recipients (BPRs). The agreement was valid from 16 March 2000 to 15 March 2005 for Unit II and from 16 November 2000 to 30 June 2005 for Unit I.

As per the terms of the agreement, incidence of income tax liability on Company was not to be recovered from the BPRs. Further, in case the BPRs continued to get power after expiry of the agreement without further renewal or formal extension thereof, then all the provisions of the agreement shall continue to operate.

On expiry of the agreement, the Company renewed/entered into fresh agreements with BPRs during 2008 to 2011 (other than KSEB) and incorporated a clause for recovery of incidence of tax liability from BPRs from the Company. However, no renewed / fresh agreement was signed with KSEB as of January 2018 despite request from KSEB.

Audit observed that Company raised claims of ₹ 115.32 crore during 2005-06 to 2010-11 on four BPRs other than KSEB towards income tax/Minimum Alternate Tax (MAT) paid as per Income Tax Act in proportion to energy drawn. The claims were paid by the BPRs. However similar claim towards income tax/MAT amounting to ₹ 6.78 crore has not been settled so far by KSEB in the absence of related clause in the BPSA of December 2000.

Though KSEB agreed (June 2016) to consider the claim of the Company towards income tax/MAT as a gesture of good business relations, it stated (August 2016) that the claim cannot be considered by them legally since any payment towards tax, which is not backed by Power Purchase Agreement (PPA) with suitable clause for payment of income tax, would be objectionable.

Audit observed that Company had represented to KSEB in September 2007 and March 2008 for payment of incidence of income tax recovery which was not agreed to. During the same period, Company renewed agreement (February 2008) with one BPR (Tamil Nadu Electricity Board) which includes a clause on recovery of incidence of income tax. Thus, to protect its financial interest, Company should have taken timely action in year 2008 for renewing the agreement with KSEB and to include clause for incidence of income tax recovery as was included at the time of renewal with other four BPRs. It could then have recovered the incidence of income tax from 2008-09 onwards which amounts to ₹ 4.60 crore.

The Management stated (November 2017) that Company has decided to pursue the claim with KSEB and accordingly matter has been taken up with KSEB for recovery of claim.

Thus, Company had to incur an additional burden of income tax/MAT to the extent of ₹ 6.78 crore of which at least ₹ 4.60 crore could have been avoided had the Company taken timely decision in year 2008 to renew the BPSA with KSEB.

The matter was reported to the Ministry in October 2017; their reply was awaited (December 2017).

10.2 Department of Scientific and Industrial Research

10.2.1 Non-Compliance of DPE Guidelines

Irregular payment due to non-approval of incentive scheme and excess payment on account of encashment of Earned Leave to employees to the tune of ₹ 6.85 crore.

(A) Irregular Payment of Incentive to Employees

Department of Public Enterprises (DPE) clarified in November 1997 that "no ex-gratia, honorarium, reward, etc., would be paid by the CPSEs under the administrative

control of the Central Government to their employees over and above entitlement under the provisions of the Bonus Act or the executive instructions issued by the DPE in respect of ex-gratia unless the amount is authorized under the duly approved incentive scheme in accordance with the prescribed procedure". Further, employees drawing wage/salary exceeding ₹ 3,500 per month (increased to ₹ 10,000 per month w.e.f. April 2006 and to ₹ 21,000 per month w.e.f. April 2014) would not be paid bonus, ex-gratia, honorarium, cash reward and special incentive etc., unless the amount was authorized under a duly approved incentive scheme.

Audit observed that Central Electronics Limited (Company) did not have any approved scheme for payment of ex-gratia, reward, honorarium etc. However, it continuously paid Plant Performance Incentive (PPI)⁵² to its employees which resulted in irregular payment of PPI of ₹ 3.77 crore during 2003-04 to 2015-16.

The Management replied (November 2017) that a new policy (Performance Incentive Scheme) has been drafted in place of existing system of payment of PPI for regular employees of Company who are out of the purview of payment of the Bonus Act, 1965. After implementation of the new scheme, the present system of PPI will be discontinued.

The Company has accepted the audit observation and framed a new incentive scheme which was approved (November 2017) by its Board of Directors. However, action for recovery of irregular payment ₹ 3.77 crore to employees on account of PPI for 2003-04 to 2015-16 is awaited.

(B) Excess Payment to Employees on Earned Leave Encashment

As per Department of Public Enterprises (DPE) instructions (April 1987), individual Central Public Sector Enterprises (CPSEs) could frame, with approval of their Board of Directors, leave rules for their employees within the broad parameters of the policy guidelines laid down by the Government of India (GoI).

Audit observed that the Company adopted 26 days as a month for the purpose of computing earned leave (EL) encashment instead of 30 days which was inconsistent with the Central Civil Service (Leave) Rules, 1972. Further DPE also clarified (December 2008) that in order to bring uniformity as to the method of calculation of encashment of EL across the CPSEs, the CPSEs should adopt 30 days a month for the purpose of calculating leave encashment. However, Audit noted that the Company paid EL encashment to its employees by considering 26 days in a month instead of 30 days in a month. This resulted in excess payment of ₹ 3.08 crore to its employees on account of EL encashment.

⁵² Except for those who are eligible for bonus as per Payment of Bonus Act, 1965.

The Management stated (November 2017) that the Board has approved (April 2017) the method of calculation of EL encashment on the basis of 30 days in a month and the same has been implemented from June 2017.

While the Company has accepted the audit observation and changed the method of EL encashment in line with the DPE instructions, the fact remains that Company had made excess payment of ₹ 3.08 crore on EL encashment in contravention of DPE guidelines.

The matter was reported to the Ministry in October 2017; their reply was awaited (December 2017).

New Delhi
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