

**GOVERNMENT OF HIMACHAL PRADESH,
FINANCE (REGULATION) DEPARTMENT.**

No. Fin(C)-A(3)-9/2009

Dated

Shimla-2

20-2-2014.

OFFICE MEMEORANDUM

Subject:: Recovery of wrongful/excess payments made to Government servants.

The undersigned is directed to invite a reference to this department letter of even number dated 18th March, 2013 and to forward herewith a copy of Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi, Office Memorandum No. 18/26/2011-Estt(Pay-I) dated 06-02-2014 which contains the guidelines to deal with the cases relating to recovery of wrongful/excess payments made to Government Servants. It is requested that these guidelines may be kept in view and relevant cases as and when received may be examined/defended in the light of these instructions based on the judgement of the Apex Court in Chandi Prasad Uniyal And Ors Vs State of Uttarakhand And Ors, 2012 AIR SCW 4742, (2012)8 SCC 417 decided on 17-08-2012, a copy of which has already been supplied to all concerned vide letter under reference.

2. These instructions may please be brought to the notice of all concerned for compliance and receipt be acknowledged.

O. P. Sharma

(O. P. Sharma)

Under Secretary (Finance) to the
Government of Himachal Pradesh.

To

All Administrative Secretaries to the
Government of Himachal Pradesh.

Endst No. Fin(C)-A(3)-9/2009

Dated

Shimla-2,

20-2-2014.

Copy forwarded to :-

1. The Principal Accountant General (Audit), Himachal Pradesh, Shimla-171003.
2. The Accountant General (A&E) Himachal Pradesh, Shimla-3.

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- 3 The Secretary to Governor, Himachal Pradesh.
- 4 The Divisional Commissioners, Shimla/ Kangra/ Mandi Divisions, Himachal Pradesh.
- 5 The Resident Commissioner, H.P. Himachal Bhawan, Sikandra Road, New Delhi.
- 6 The Secretary, H.P. Vidhan Sabha, Shimla-171004.
7. All Heads of Departments in Himachal Pradesh.
8. The Registrar General, H.P. High Court, Shimla-171001 (H.P.)
9. The Secretary, H.P. Public Service Commission, Shimla-171002.
10. All Deputy Commissioner in Himachal Pradesh.
11. The Controller, Printing and Stationery Department, Himachal Pradesh, Shimla-171005 for immediate publication in Rajpata.
12. The Secretary, Lokayukta, Pine Grove Building, Shimla-2.
13. The Registrar, H.P. State Consumer Commission, Shimla.
14. The Secretary, H.P. Subordinate Services Selection Board, Hamirpur.
15. All District Treasury Officers/ Treasury Officers in H.P.
16. The Resident Commissioner, Pangri, Chamba, Himachal Pradesh.
17. The Controller, Deptt. of Personnel, H.P. Sectt Shimla-2.
18. Guard File 50 spare copies.

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Under Secretary (Finance) to the
Government of Himachal Pradesh.

F. No. 18/26/ 2011-Estt (Pay-I)
Government of India
Ministry of Personnel, PG and Pension
Department of Personnel and Training

North Block, New Delhi,
Dated the 6th February, 2014

OFFICE MEMORANDUM

Subject: Recovery of wrongful/excess payments made to Government servants.

The undersigned is directed to say that the issue of recovery of wrongful/excess payments made to Government servants has been examined in consultation with the Department of Expenditure and the Department of Legal Affairs in the light of the recent judgement of the Hon'ble Supreme Court in *Chandi Prasad Uniyal And Ors vs State Of Uttarakhand And Ors*, 2012 AIR SCW 4742, (2012) 8 SCC 417, decided on 17th August, 2012. The Hon'ble Court has observed as under:

15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.
16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments


have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

2. Hon'ble Supreme Court also distinguished the cases like *Shyam Babu Verma v UOI*, 1994 SCR (1) 700, 1994 SCC (2) 52, *Syed Abdul Qadir and Ors. v. State of Bihar and Ors.*, (2009) 3 SCC 475, *Sahib Ram v. State of Haryana*, 1995 Supp (1) SCC 18 etc., where it had not allowed recovery of excess payment in view of the peculiar facts and circumstances of those cases so as to avoid extreme hardship to the concerned employees, for example, where the employees concerned were mostly junior employees, or they had retired or were on verge of retirement, the employees were not at fault, and recovery which was ordered after a gap of many years would have caused extreme hardship.

3. In view of the law declared by Courts and recently reiterated by the Hon'ble Supreme Court in the above cited case, *Chandi Prasad Uniyal And Ors vs State Of Uttarakhand And Ors*, 2012 AIR SCW 4742, (2012) 8 SCC 417, the Ministries/Departments are advised to deal with the issue of wrongful/excess payments as follows:

- i. In all cases where the excess payments on account of wrong pay fixation, grant of scale without due approvals, promotions without following the procedure, or in excess of entitlements etc come to notice, immediate corrective action must be taken.
- ii. In a case like this where the authorities decide to rectify an incorrect order, a show-cause notice may be issued to the concerned employee informing him of the decision to rectify the order which has resulted in the overpayment, and intention to recover such excess payments. Reasons for the decision should be clearly conveyed to enable the employee to represent against the same. Speaking orders may thereafter be passed after consideration of the representations, if any, made by the employee.
- iii. Whenever any excess payment has been made on account of fraud, misrepresentation, collusion, favouritism, negligence or, carelessness, etc., roles of those responsible for overpayments in such cases, and the employees who benefitted from such actions should be identified, and departmental/criminal action should be considered in appropriate cases.
- iv. Recovery should be made in all cases of overpayment barring few exceptions of extreme hardships. No waiver of recovery may be allowed without the approval of Department of Expenditure.
- v. While ordering recovery, all the circumstances of the case should be taken into account. In appropriate cases, the concerned employee may be allowed to refund the money in suitable installments with the approval of Secretary in the Ministry, in consultation with the FA.

- vi. Wherever the relevant rules provide for payment of interest on amounts retained by the employee beyond the stipulated period etc as in the case of TA, interest would continue to be recovered from the employee as heretofore.


(Mukesh Chaturvedi)

Deputy Secretary to the Government of India
Phone No. 23093176

To

All Ministries/ Departments (as per standard list)

Copy also forwarded to:

1. Secretary General / Registrar General, Supreme Court of India.
2. Secretary General of Lok Sabha Sectt. / Rajya Sabha Sectt.
3. Secretaries in Cabinet Sectt. / Central Vigilance Commission / President's Sectt. / Vice-President's Sectt./ Prime Minister's Office / UPSC / Planning Commission.
4. Controller General of Accounts/Controller of Accounts, Ministry of Finance.
5. Governors of all States/Lt. Governors of all Union Territories.
6. Secretary, National Council of JCM (Staff Side), 13-C, Feroz Shah Road, New Delhi.
7. All Members of Staff Side of the National Council of JCM/ Departmental Council.
3. All Officers / Divisions / Sections of Deptt. of Personal & Training / Deptt. of Administrative Reforms & Public Grievances / Department of Pensions & Pensioners Welfare/ PESB
9. Joint Secretary (Pers.), D/o Expenditure, Ministry of Finance.
10. Additional Secretary (Home), Ministry of Home Affairs.
11. Director NIC, DoPT- for uploading on the web site of the Department under Establishment "Pay Rules".
12. 25 Spare copies.

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