

Model representation 4 : Draft on Over payment of recovery & regulation of pay after the punishment under minor penalties

The DOPT has issued clarification OM No.6/3/2013-Estt (Pay I) dated 6.2.2014 about model illustration to regularize the pay after the punishment is over wherein model illustration was omitted for minor penalty of reduction of pay under minor penalty. This has been rectified by the subsequent DOPT order dated 18.6.2019. However huge recovery had been inflicted to the officials who were awarded minor penalty in between these two Oms. Over payment to the lakhs were made from the retirement benefits. The following is the draft I prepared to challenge the recovery and now the Department has clarified vide its letter No. 02-01/2023-PAP dated 28.5.2024 but it has been circulated only to Tamilnadu Circle.

There may be many cases in all the circles. Please go through the draft in which there are two parts. One no recovery can be made at the time of superannuation. Second challenging the 2014 orders.

I hope that this will be very useful to every viewers of this blog

Sub: Irregular reduction of pay by misinterpreting the DOPT orders and irregular audit objections alleging over payment of pay and allowances – C/o

With due regards and respects, I submit the following for your kind consideration and orders.

At the outset and before going to the merit of the case, I wish to place on record that the Postal accounts is contemplating irregular action against the fixation of pay after the completion of the punishment after completion of ten years period and ordering for recovery which is tantamount against to the spirit of the following Government orders.

1. In accordance with the DOP & PW OM No. 11(15)/2022-P&PW(H) -8363(1) dated 28.10.2022, the process of pension case on superannuation shall be commenced during the one year period before retirement. I am due for retirement on 31.3.2023 and raising objection of my pay fixation is against to the spirit of this order.
2. As per the orders stated in para supra, under Para C, that the emoluments during the last ten months of service have been correctly shown in the service book, the Head of office shall verify the correctness of emoluments **only for the period of twenty four months preceding the date of retirement of a Government servant, and not for any period prior to that date. As such raising objection for the fixation made in 2012 is highly irregular and against to the spirit of the Govt of India orders.**
3. It is pertinent to mention that in the same orders, it is stated that at least eight months prior to retirement of a Govt servant the HOD shall furnish to the retiring Government servant a certificate regarding the length of qualifying service and the emoluments/ average emoluments to be reckoned for retirement benefits. Nothing had been served so far and as such the process should have been completed prior to eight months of superannuation.
4. A kind attention is drawn to the DOPT OM No. 18/03/2015 – Estt (Pay I) dated 3.10.2022 in which the Govt had quoted the Supreme Court judgments any excess payment found at a later date

should be considered for waiver and the amount should not be recovered from the officials. The DOPT instructed that pay fixations of all the cases may necessarily be audited by the internal audit or the Pay & Accounts office within three months of issuing such orders and in cases where the employee is due to retire within next 4 years, audit of previous pay fixation orders shall be done on priority. From this it is evident that there should be no review beyond the period of 4 years based on the Supreme Court verdict communicated by the DOPT vide its OM No.18/03/2015 – Estt (Pay-I) dated 2.3.2016.

5. As per the orders stated in para supra, there should be no recovery from the employees who are due to retire within one year. There should be no recovery in cases from an employee when the excess payment has been made for a period of five years, before the order of recovery is issued. In my case it is 10 years old and there is no prima facie to recover any amount after the completion of five years and in the face of the order itself the ordering of recovery in my case is defective and against to the spirit of Supreme Court decision which was accepted and ordered by the Government of India during 2016. This has been again reiterated and exhibited in the DOPT in the website during November on the heading of recovery/waiver of the wrongful/excess payments made to Government servants.

Now, I am submitting the merits of the case to thwart the irregular objection raised by the Postal Audit.

1. I have been awarded in a Rule 16 case Vide memo No dated 22.12.2011 of the with the punishment of reduction of pay from Rs.13100 + Rs.4200 Grade pay in the pay band of Rs.9300 to Rs.34800 for one year with effect from 23.11.2011 and I will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will not have the effect of postponing my increments of pay.

2. Accordingly, my pay had been reduced for one year and the due increment was not drawn on 1.7.2012 during the currency of the period and thereafter the due increment was drawn and regularised as per the orders of the disciplinary authority. The pay fixation is in order as per the rulings since the punishment awarded is under Rule 16 which should not have any adverse effect after the punishment period is over. Otherwise the punishment order itself inoperative.

3. Now the Audit office is objecting the drawal of one increment which was not drawn during the period of punishment and subsequently drawn after the punishment was over since the Disciplinary authority had mentioned in the proceedings that the reduction will not have the effect of postponing my future increments of pay. The Audit party, proposed to reduce my pay to one stage which I was drawn as my increment after the punishment was over and raised a note to recover a sum of Rs.....being the over payment of pay and allowances for the period from 2012. The objection was based on the DOPT OM No.6/3/2013-Estt (Pay I) dated 6.2.2014

4. It is pertinent to mention that the OM did not have the illustration on Rule 16 cases about reduction of pay which was the ruse taken by the audit. The DOPT vide its order under OM No.11012/15/2016-Estt A III dated 18.6.2019 subsequently rectified the mistake and added the illustration for such cases under Rule 16 punishments. The 6.2.2014 order became obsolete due to the amendments given by the DOPT in the subsequent order dated 18.6.2019. As such ignoring the latest orders and depending upon the obsolete OM is nothing but a farse with the cruel mind causing unnecessary tension to me at the time of the superannuation.

5. According to FR 29 (1), if the pay of a Government servant is reduced as a measure of penalty to a lower stage in his time scale, the authority ordering such reduction shall state in the proceeding orders about the period for which it shall be effective and whether on restoration, the period of reduction shall operate in postponing the future increment and is so to what extent.

6. In accordance with the M.F. O.M.No F2(34) E III/59 dated 17.8.1959 and 9th June 1960 under Para(b), the question as to what should be the pay of the Govt servant on the expiry of the period of reduction shall be decided as follows:

(i) If the original order of reduction lays down that the period of reduction shall not operate to postpone future increments or is silent on this point, the Govt servant should be allowed the pay which he would have drawn in normal course but for reduction.

7. I submit that in my case that the Disciplinary authority had specifically mentioned that the reduction will not have the effect of postponing my future increments of pay. It was silent on the other part and therefore the benefit should be extended in my case. I am submitting hereunder the effects of my punishment for kind information.

(i) My pay has been reduced to Rs.12600+4200 = 16800 from Rs. 13110+4200= 17310. Ie. Pay should be reduced only to the extent of Rs.510 only.

(ii) The pay reduction was in operation for one year ie from 23.12.2011 to 22.12.2012.

(iii) I will not earn increment during the period of punishment ie one year

(iv) But the reduction of my pay will not have the effect of postponing of my future increments of pay.

(v) As such I had to be drawn Rs.16800 pay from 23.12.2011 to 22.12.2012. and my increments were drawn and I have been drawn with the pay of Rs. 17820

8. The Audit party objected the drawal and the verification memo is as follows;

Period	If no punishment	During punishment
23.12.2011 to		
30.6.2012	17310	16800
1.7.2012	17820	16800
22.12.2012	17820	Restoration of punishment 1.7.2013

9. The Audit has raised the objection and regulated the pay as per the verification memo by citing OM No. 6/3/2013- Estt (Pay) dated 6.2.2014. It is pertinent to mention that in the verification memo of the DA (P) had cited the example of 2-A of the O.M. No 6/3/2013 dated 6.2.2014. The example cited in the DA (P) memo is contrary to the statutory rules under FR 29(1). No one is having the right either to violate, disobey or misinterpret the statutory rules by citing the instructions.

10. The DOPT, understanding the wrong issue of illustration in the Memo cited above dated 6.2.2014 which has not made illustrations separately for the both the reductions with cumulative effect and without cumulative effect separately and made one for both the cases in the said memo and also in

order to rectify the errors in the said memo has now released the OM dated 18.6.2019 in which under example 6 ie. Reduction to a lower stage without cumulative effect (penalty under Rule 11 (vi) and the same is applied the objection raised by the DA(P) will be proved as wrong. The objection raised by the Audit and alleged over payment is erroneous and incorrect and also against to the statutory rules of FR 29(1)

It is therefore requested to kindly set aside the irregular objection based on the above submissions and ensure that there should be no reduction in payment or ordering for overpayment which is tantamount to the denial of Supreme Court decision and DOPT orders on the subject for which kind act I will be grateful.

After the receipt of clarification by the Department stated in the preamble if any such case is pending at your side, please use the following para to settle the case. The Department has to settle the case as per the DOPT clarification.

“To conclude the representation, I submit that the recovery made from my retirement benefits to the extent of Rs. is arbitrary, unjust and against to the canon of natural justice and also violation of Directorate instructions dated 28.5.2024 communicated by the Chief PMG Tamilnadu circle in his letter dated 10.6.2024.

It is therefore requested to cause immediate action to refund the excess recovery made from my pensionary benefits immediately for which kind act I will be grateful.”

Feedbacks are welcome

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