

## Compliance with DPE Guidelines

### 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 7 Audit Paras, involving 27 CPSEs violating the DPE guidelines, printed in the CAG's Audit Report No.3 of the year 2011-12. 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		Subsequent irregular payment
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	Non-recovery of Perquisites Tax	1	18*	18	363.38	7.45*	6*	167.40*
2	Payment of Perquisite and Allowances	1	1	1	359.55	Nil	Nil	Nil
3	Excess payment of House Rent	2	4	2	30.68	Nil	Nil	Nil
4	Payment of Ex-gratia/	1	1	1	18.61	Nil	Nil	Nil
5	Payment of Golden Jubilee Incentive	1	1	1	173.70	Nil	Nil	Nil
6	Encashment of earned leave	1	2*	2	0.59	NA*	NA*	NA*
<b>Total</b>		<b>7</b>		<b>27</b>	<b>946.60</b>	<b>7.45</b>	<b>6</b>	<b>167.40</b>

\*Six CPSEs under Ministry of Railways did not provide information as to the corrective action taken on the Audit Para.

Out of the 27 cases, the irregularities have been stopped in 13 cases. In 6 cases, the irregularities still continue. In 8 cases, involving eight CPSEs under the Ministry of Railways, the information was not readily available.

It would be seen from table above that the violation of DPE guidelines resulted in substantial irregular payment/non-recovery amounting to ₹946.60 crore, as reported in the CAG's Audit Report no.3 of the year 2011-12. In fact, these irregularities were noticed as a result of test check only and there could be more such cases of irregular payment.

In 7 cases there was further irregular payment of ₹167.40 crore, including one case where the irregularity was stopped belatedly.

In short, considering the magnitude of the irregularities involved, DPE may issue suitable instructions to all CPSEs to ensure that CPSEs do not violate the guidelines and that timely action is taken on the reported irregular payments.

### 5.3 Status of 'Follow-up' on non compliance

Audit reviewed the corrective action taken by CPSEs to recover the irregular payments and issue directives for future compliance and more importantly, the role played by the DPE in ensuring the recovery of irregular payment and remedial action by CPSEs on audit issues as discussed below:

### 5.3.1 Non-recovery of Perquisite Tax

DPE guidelines issued in March 2000<sup>\*</sup> clearly list out the allowances/perks outside the purview of ceiling of 50 per cent of the basic pay and the list does not cover payment of tax on perquisites. Audit observed that these guidelines were violated by 18 CPSEs and an amount of ₹ 363.38 crore for perquisites tax was irregularly paid.

Audit observed that, out of these 18 CPSEs making irregular payment of ₹ 363.38 crore, only one CPSE recovered an amount of ₹ 7.45 crore and also stopped the irregular payment. As many as 11 CPSEs did not recover any amount and six CPSEs did not provide any information as to the recovery of irregular payment.

In regard to subsequent irregular payment, seven CPSEs made subsequent irregular payment amounting to ₹ 167.40 crore, seven CPSE did not provide this information and the four CPSEs stopped the irregular payment.

### 5.3.2 Payment of Perquisites and Allowances

The DPE issued guidelines in June 1999<sup>†</sup> for pay revision of employees of CPSEs with effect from 1 January 1997 and stipulated therein a ceiling of 50 per cent of the basic pay on payments made to employees towards perquisites and allowances (excluding different incentive payments, canteen subsidy, tax and housing perquisites and subsidy to education institution). The above guidelines also stipulated that the payments over and above the ceiling of 50 per cent of the basic pay were required to be entirely in the nature of performance related payments and the guidelines further put a ceiling of 5 per cent of the distributable profit of an enterprise which could be utilized towards such payments.

Audit observed that one CPSE incurred an excess expenditure of ₹ 359.55 crore in contravention of above guidelines on perquisites and allowances for executives and non-unionized supervisors. The CPSE was yet to make recovery of the irregular payments but it has since stopped the irregular payment after the audit observation.

### 5.3.3 Excess payment of House Rent

As per DPE guidelines of June 1999<sup>‡</sup>, house rent allowance (HRA), as a percentage of basic pay, was payable to the employees of CPSEs at the rates applicable to central government employees based on the reclassified list of cities notified by the Government. In January 2011, DPE clarified that the CPSE employees would be allowed to draw the earlier rates of HRA on the revised pay where ever HRA rates were lower than the earlier rates as per new classification of cities. Four CPSEs violated these guidelines and irregularly paid an amount of ₹ 30.68 crore.

Audit observed that all the four CPSEs stopped the irregular payment subsequent to the audit observation, but none of the CPSEs effected any recovery of the irregular payment and the entire amount of ₹ 30.68 crore remained unrecovered.

### 5.3.4 Payment of Ex-gratia

DPE issued instructions in November 1997<sup>§</sup> that the employees drawing wage or salary exceeding ₹ 3,500 *per mensem* (increased to ₹ 10,000 *per mensem* w.e.f. April 2006) would not

<sup>\*</sup> DPE OM No. 2(15)/2000-DPE (WC) –GL XIX dated 27<sup>th</sup> March 2000

<sup>†</sup> DPE OM No. 2 (49)/ 98 -DPE (WC) dated 25<sup>th</sup> June 1999

<sup>‡</sup> DPE OM No. 2 (49)/ 98 -DPE (WC) dated 25<sup>th</sup> June 1999

<sup>§</sup> DPE OM No. 2 (22)/97 -DPE (WC) dated 20<sup>th</sup> November 1997

be paid ex-gratia, honorarium, rewards etc, unless the amount was authorized under the duly approved incentive schemes in accordance with the prescribed procedure.

Audit observed that, in violation of the above DPE guidelines, one CPSE paid in cash ex-gratia of ₹ 18.61 crore. The CPSE has since stopped the irregular payment but did not make any recovery of the irregular payments.

### 5.3.5 Payment of Golden Jubilee Incentive

One CPSE made an outright payment of ₹ 50,000 to each of its employees amounting to ₹ 173.70 crore as part of its golden jubilee celebration. This payment was, however, not consistent with the DPE guidelines of November 1997\* on ex-gratia, honorarium, rewards etc and DPE guidelines of June 1999† on performance related payments. No recovery was made in this case but there was no subsequent irregular payment as it was a onetime event.

### 5.3.6 Encashment of earned leave

As per DPE's instructions of April 1987‡, an individual CPSE may frame leave rules for its employees keeping the broad parameters of the policy guidelines laid down in this respect by the Government of India. Audit observed that two CPSEs adopted 26 days as a month for the purpose of computing earned leave encashment instead of 30 days, though no such provisions existed in the Central Civil Service (Leave Rules, 1972). This resulted in an excess payment of ₹ 0.59 crore to the employees by two CPSEs. Both the CPSEs did not provide any information as to the corrective action taken on the Audit Para.

## 5.4 Oversight role of DPE

The DPE, being the nodal agency dealing with the affairs of CPSEs, is expected to monitor the adoption of its guidelines by the CPSEs' Boards and also monitor compliance with these guidelines.

Though the DPE guidelines are advisory, for good corporate governance, there should be an appropriate mechanism to enforce accountability of the Administrative Ministries and CPSEs to the compliance to DPE guidelines.

An Audit review of the institutional arrangement that DPE has in place to ensure compliance to its guidelines revealed that:

- **DPE did not maintain database as to which CPSEs' Boards adopted its guidelines;**
- **DPE did not have a mechanism to ensure compliance with all its guidelines;**
- **DPE did not write to CPSEs for recovery of irregular payments pointed out by Audit.**

In essence, the role of DPE in ensuring compliance with its own guidelines by CPSEs was not effective.

DPE stated (January 2012) that it was proposing to the Cabinet Secretariat (Secretary, Performance Management) to include 'compliance to DPE guidelines' as mandatory objective in Annual Results Framework Document (RFD) of the Administrative Ministries under which the respective CPSEs fall.

\* DPE OM No. 2 (22)/97 -DPE (WC) dated 20<sup>th</sup> November 1997

† DPE OM No. 2 (49)/ 98 -DPE (WC) dated 25<sup>th</sup> June 1999

‡ DPE OM No. 2 (27)/85 -DPE (WC) dated 24<sup>th</sup> April 1987

## 5.5 Directives of Parliamentary Standing Committee on Industry

Department-related Parliamentary Standing Committee on Industry in its 216th Report, presented before Parliament on 19-4-2010, 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".

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 few of its guidelines as one of the parameters in MoUs of 2012-13, with mandatory weight of 5. 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 upto 5 depending on degree/ seriousness of non-compliance.

## 5.6 Recommendations:

- **DPE should set up suitable institutional arrangement to ensure compliance with all its guidelines for ensuring good corporate governance.**
- **On non-compliance issues reported in Audit, DPE/Administrative Ministries should ensure timely remedial action.**