CHAPTER XIII: DEPARTMENT OF PUBLIC ENTERPRISES

National Aluminium Company Limited, Bharat Heavy Electricals Limited, Housing and Urban Development Corporation Limited, GAIL (India) Limited, NHPC Limited, NTPC Limited, Power Finance Corporation Limited, Power Grid Corporation of India Limited, SJVN Limited THDC India Limited and Indian Oil Corporation Limited

13.1 Irregular payment towards encashment of Half Pay Leave/Sick Leave/Earned 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 ₹ 138.58 crore from January 2006 to October 2013. Further, CPSEs made irregular contributions of ₹ 23.42 crore on account of provident fund in respect of leave encashment to employees during 2008 to 2012 and did not adjust excess contributions amounting to ₹ 38.70 crore made prior to March 2008 in violation of the judgment (March 2008) of Hon'ble Supreme Court of India and instructions of Employees Provident Fund Organisation

According to the Department of Public Enterprises (DPE) instructions of April 1987[1], an individual central public sector enterprise (CPSE) may frame leave rules for its employees keeping the broad parameters of the policy guidelines laid down in this regard by the Government of India (GOI).

GOI allowed encashment of half pay leave (HPL) and earned leave (EL) put together within the overall ceiling of 300 days with effect from 1-1-2006, on superannuation, which was an enhancement to the earlier ceilings on encashment of EL up to 240 days. Thus, in terms of DPE instructions of April 1987 *ibid*, CPSEs were also required to follow the overall ceiling of 300 days for encashment of EL and HPL for their employees on retirement.

On a reference made by Ministry of Shipping DPE clarified to all CPSEs on 26 October 2010[2] that, they were not permitted to encash leave beyond the overall ceiling of 300 days. In a further clarification of 17 July 2012[3], referring to its instructions of April 1987, DPE reiterated that sick leave could not be encashed, though EL and HPL could be considered for encashment of leave on retirement subject to the overall limit of 300 days.

A. Audit observed that the following CPSEs deviated from the DPE guidelines and made irregular payment of ₹ 138.58 crore to their employees towards HPL/SL/EL encashment on superannuation over and above the ceiling of 300 days.

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[1] *OM No. 2(27)85-BPE(WC) dated 24 April 1987*

[2] *OM No. 2(32)10-DPE(WC) GL-XXIII dated 26 October 2010*

[3] *OM No. 2(14)/2012-DPE(WC) dated 17 July 2012*

Sl. No.	Administrative Ministry	Name of CPSE	Period	Amount (₹ in crore)
1	Ministry of Mines	National Aluminium Company Limited (NALCO)	January 2006 to March 2013	25.67
2	Ministry of Heavy Industries	Bharat Heavy Electricals Limited (BHEL)	April 2013 to October 2013	36.86
3	Ministry of Housing and Urban Poverty Alleviation	Housing and Urban Development Corporation Limited (HUDCO)	January 2006 to October 2012	2.16
4	Ministry of Petroleum and Natural Gas	GAIL (India) Limited	April 2008 to March 2013	2.51
5.	Ministry of Petroleum and Natural Gas	Indian Oil Corporation Limited (IOCL)	April 2008 to March 2013	71.38
TOTAL				**138.58**

NALCO stated (August 2013) that DPE guidelines for encashment of HPL were applicable only to Central Government employees and PSU executives drawing salary on CDA[1] pattern. The executives of the Company drew their salary on IDA[2] pattern of scales and no such guideline/directive was received in respect of such executives drawing salary on IDA pattern of scales.

BHEL stated (January 2014) that there were no specific instructions from DPE prohibiting encashment of HPL during the service period.

HUDCO stated (February/November 2013) that encashment of HPL was a conscious decision of the Company with a view to retaining efficiency and to get output without increasing the number of employees.

GAIL stated (October-2013) that commuted leave could be availed on medical grounds whereas half-pay leave was admissible on other grounds also. In oil industry, where the operations were round-the-clock, such type of absence adversely affected the operations and caused additional strain on its finances.

IOCL stated (October-2013) that its Board had allowed (1984) encashment of sick leave/half pay leave as an operational requirement with the objective that it should act as a disincentive to proceeding on leave and curb absenteeism which were frequently resorted to in the last few years prior to retirement by the individuals on one ground or the other. Therefore, leave rules had been framed in line with the flexibility for CPSEs under the DPE guidelines. Accordingly, payment towards leave encashment was in compliance to the broader framework of DPE guidelines and within the rules of the Company.

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

[1] ***Central DA***
[2] ***Industrial DA***

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

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 employee's 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 Court[1] (September 1994) and the Karnataka High Court (October 2003)[2], held that the 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 decided[3] (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.

Examination in Audit revealed (December 2012 to September 2013) that seven CPSEs *viz.,* Bharat Heavy Electrical Limited (BHEL), NHPC Limited (NHPC), NTPC Limited (NTPC), Power Grid Corporation India Limited (PGCIL), THDC India Limited (THDC), SJVN Limited (SJVN) and Power Finance Corporation Limited (PFC), either continued to make employer's contribution to employees' provident fund on the amount of leave encashment even after the judgment of Supreme Court or did not adjust the employer's share on leave encashment already paid against future liabilities. Details of employer's contribution on the amount of leave encashment paid by the above CPSEs are detailed below:

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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***

(₹ in crore)

Sl. No.	Name of Company	Month of starting payment of employer's share of EPF contribution on leave encashment	Month of discontinuation of employer's share of EPF contribution on leave encashment	Total payment of employer's share of EPF contribution on leave encashment excluding employees retired before judgement of Supreme Court	Amount contributed by employer after date of judgement (included in column 5)	Amount adjusted/ agreed to be adjusted by employer
1	**2**	**3**	**4**	**5**	**6**	**7**
1	BHEL	April 2005	May 2008	15.16	0.72	Nil
2	NHPC	Feb 2005	Feb 2012	18.58	15.15	Nil
3	NTPC	June 2001	October 2008	20.91	3.37	Nil
4	PGCIL	June 2003	October 2008	4.39	1.13	Nil
5	THDC	May2005	April 2012	3.08	2.37	Nil
6	SJVN	Aug 2006	Feb 2011	0.76	0.68	0.76
7	PFC	April 2005	May 2008	0.23	0	0.23
	Total			**63.11**	**23.42**	**0.99**

It is evident from the above that (i) six out of above seven CPSEs viz. BHEL, NHPC, NTPC, PGCIL, THDC and SJVN continued making EPF contribution to the extent of ₹ 23.42 crore on leave encashment even after the judgment (March 2008) of Supreme Court. Except BHEL and PFC, EPF contributions on leave encashment were continued even after specific instructions of EPFO (May 2008). (ii) Out of excess contributions amounting to ₹ 39.69 crore (₹ 63.11 crore less ₹ 23.42 crore) pertaining to the period prior to the decision of Supreme Court, an amount of ₹ 38.70 crore (₹ 39.69 crore less ₹ 0.99 crore adjusted/ assured to be adjusted by SJVN and PFC) remained unadjusted.

BHEL stated (September 2013) that adjustment in respect of serving employees was not possible as different stand on the same policy issue could not be taken in respect of serving and retired employees for the same period of service.

NHPC/Ministry stated (February 2013/March 2014) that payment of EPF contribution on leave encashment was discontinued when the auditors pointed out the irregularity while finalizing the annual accounts of 2010-11.

NTPC stated (October 2013) that the time taken in stopping provident fund deductions after Supreme Court judgment was on account of procedures involved.

PGCIL/Ministry stated (July 2013/March 2014) that they had implemented the decision of Supreme Court from October 2008.

THDC/Ministry stated (October 2013/March 2014) that consequent upon decision of Supreme Court, the matter was referred to legal consultant in view of legal complexities relating to its implementation and the practice was finally discontinued in 2012-13. Further, to avoid employee unrest it was decided not to adjust the excess contributions in future.

SJVN/Ministry stated (June 2013/March 2014) that instructions of EPFO of May 2008 were received by them in January 2011 and the practice was discontinued from February 2011.

PFC stated (September 2013) that action was being taken to adjust the amount of excess contribution against future contributions and to recover the amount from separated/retired employees.

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

The matter was reported to the Ministry of Heavy Industries and Public Enterprises and Ministry of Power (November 2013); their response in respect of BHEL, PFC and NTPC was awaited (March 2014).

Oil and Natural Gas Corporation Limited, MECON Limited, Rural Electrification Corporation Limited, Bharat Heavy Electricals Limited and Bharat Dynamics Limited

13.2 Irregular payment towards Performance Related Pay

Due to non adherence to the DPE guidelines with respect to payment of 'performance related pay', the CPSEs made an irregular payment of ₹ 202.95 crore for the years 2008-09 to 2012-13.

The Department of Public Enterprise (DPE) issued instructions (November 2008) for regulating pay and allowances perquisites and performance related pay (PRP) to executives and non-unionised supervisors of CPSEs. The above instructions directly linked PRP to the profits of the Central Public Sector Enterprises (CPSE) and performance of Executives. These instructions and further clarifications issued thereon in November 2010 and July 2011 *inter alia* laid down following conditions for payment of PRP.

(i) Each CPSE was required to adopt a 'Bell Curve Approach' in grading the officers so that not more than 10 to 15 *per cent* executives were graded as 'Outstanding/Excellent' and 10 *per cent* of executives should be graded as 'Below Par'. DPE further clarified (July 2011) that each CPSE has to follow 'Bell Curve Approach' strictly and ensure that 10 *per cent* of executives be graded as 'Below Par' and are not paid any PRP.

(ii) PRP by CPSEs to their executives was subject to twin ceilings *viz.* (a) grade-wise ceilings ranging from 40 *per cent* to 70 *per cent* of basic pay for executives below Board level and 100 *per cent* to 200 *per cent* of basic pay for Board level executives and (b) an overall ceiling of 5 *per cent* of profit before tax of an enterprise.

(iii) Profit Before Tax (PBT) for computation of PRP was expected to come out from the specified objectives and core activities of CPSEs and that extraordinary items like valuation of stock, grants/waiver by Government, sale of land, *etc.,* (list of items is not exhaustive) was not to be included in calculation of PBT as far as PRP is concerned.

Audit observed that the following CPSEs deviated from the DPE guidelines and made irregular payment of ₹ 202.95 crore to their employees towards performance related payments:

Sl. No.	Administrative Ministry	Name of CPSE	Period	Irregularity	Amount (₹ in crore)
1	Ministry of Petroleum and Natural Gas	Oil and Natural Gas Corporation Limited (ONGC)	2010-11 to 2012-13	While the Company graded 10 *per cent* executives as below par, it paid PRP to all the executives except 2 *per cent* during 2010-11 and 0.132 *per cent* during 2011-12 out of executives with 'Below Par' grading.	117.10
2	Ministry of Steel	MECON Limited	2009-10 to 2011-12	Company did not follow 'Bell Curve' approach and considered only two *per cent* of its total executives as 'Below Par'. Paid PRP to all its executives including two *per cent* who were considered Below Par during 2009-10 and 2010-11. However, PRP for 2011-12 was paid to 98 *per cent* of its total executives. The Remuneration Committee of Company had segregated all executives where performance of 15 *per cent* of total executives was graded as 'Excellent', 45 *per cent* executives as 'Very Good' and 30 *per cent* as 'Good' in line with the DPE guidelines. However the Company did not adhere to this segregation during 2009-10 to 2011-12 and modified the performance rating of 17 to 24 *per cent* executives as 'Excellent' and 57 to 64 executives as 'Very Good' and 14 to 17 *per cent* as 'Good'.	9.12
3	Ministry of Power	Rural Electrification Corporation Limited (REC)	2009-10 to 2012-13	Remuneration Committee of the Company observed (December 2011) that introduction of gradewise ceilings as per DPE instructions of November 2008 resulted in average reduction of 68 *per cent* in incentive payments to executives as compared to the then existing PRP scheme including ex-gratia payment in operation in	51.68

				REC. The company therefore paid an additional component in the form of 'baseline compensation' to executives to subject to a maximum of 66 per cent of their basic pay and within overall ceiling of 5 *per cent* of profit of REC to partially compensate them against fall in the PRP.	
4	Ministry of Heavy Industries and Public Enterprises	Bharat Heavy Electricals Limited	2008-09	Remuneration Committee of the Company noted (January 2010) that advance payment of PRP for 2008-09 had already been made by the Company in excess of the PRP payable and recovery of excess amount already paid would demotivate the employees. The Company waived off excess payment already made to executives.	15
5	Ministry of Defence	Bharat Dynamics Limited (BDL)	2007-08 to 2010-11	PBT of ₹276.52 crore of the Company for 2007-08 to 2010-11 included interest income of ₹474.29 crore earned on short term deposits of funds, received mainly as advances from Ministry for various projects entrusted to the Company. If PBT had been arrived at only from income related to the core activities of the Company excluding interest income of ₹474.29 crore, payment of PRP would not have arisen as there was no profit during the period 2007-08 to 2010-11, for the purpose of payment of PRP.	10.05*
TOTAL					**202.95**

*This apart, provisions of ₹ 10.07 crore and ₹ 10.64 crore towards PRP for the years 2011-12 and 2012-13 respectively have also been made.

Thus, the CPSEs made irregular payments towards PRP to their executives in deviation of DPE guidelines.

ONGC stated (October 2013) that (a) DPE guidelines did not mention about zero (Nil) PRP payments to Executives. It only mentioned that 10 *per cent* of the Executives were to be graded 'Below Par'.

MECON Limited stated (December 2013) that (a) it was not practically feasible for a consultancy, design and engineering organization like MECON to strictly identify 10 *per cent* executives as non-performer every year and grade them as Below Par; (b) DPE did not say that PRP should not be paid to Below Par executives; and (c) the excellent performers identified by the Company were only marginally more than 15 *per cent*.

REC/Ministry stated (June 2013/January 2014) that payment of performance linked 'baseline compensation' was made after carefully examining all aspects of the matter including decline in incentive payments under the new set of rules which had the potential of seriously undermining the morale and motivation of the employees.

BHEL stated (June 2012) that since the PRP scheme was implemented retrospectively and payment on account of PRP advance for the year 2008-09 had been made earlier, it would not have been appropriate to effect recovery as it would have created resentment as also de-motivated the employees.

In respect of **BDL** Ministry stated (October 2013) that interest income was not an extraordinary income as it arose from the stage payments received under the contract which had specified milestones. The prices of defence equipment were finalised considering the payment of advances and hence interest income was to be considered as business income.

Replies of CPSEs/Ministry are to be viewed against the facts that:

(i) DPE Office Memorandum (OM) dated 06 July 2011 had clearly stipulated that 10 *per cent* of the Executives had to be graded as 'Below Par' and not paid any PRP". It is, thus, clear that DPE guidelines enjoin CPSEs not only to grade 10 *per cent* of the Executives as 'Below Par' but also to not pay any PRP to Executives thus identified.

(ii) DPE instructions of November 2008 did not provide protection of PRP being paid to executives prior to these instructions and hence the rationale of financial loss to employees was flawed. Further, grade-wise ceilings were fixed by DPE in addition to overall ceiling of 5 *per cent* of distributable profits and BoD was not empowered under DPE instructions to approve PRP in excess of these grade-wise ceilings.

(iii) Inadmissibility of PRP on the element of profit accrued from the interest income is clear from the clarifications given by the DPE in November 2010 that profit of CPSEs is expected to come out from their specified objectives and core activities. Investment of surplus funds on advances received from Defence customers is an incidental activity and not a core activity. Income so earned is not the income from business operations.

Thus, due to non adherence to the DPE guidelines with respect to payment of 'performance related pay', the CPSEs made an irregular payment of ₹ 202.95 crore for the years 2008-09 to 2012-13.

General Insurance Corporation of India Limited, Northern Coalfields Limited, Steel Authority of India Limited, NMDC Limited, Oil and Natural Gas Corporation Limited, Bharat Heavy Electricals Limited, Food Corporation of India and Airports Authority of India

13.3 Recoveries at the instance of audit

During test check, several cases relating to non-recovery, excess payment, irregular payment etc. were pointed out. In 20 cases pertaining to eight CPSEs, audit pointed out

that an amount of ₹ 140.76 crore was due for recovery. The management of CPSEs had recovered an amount of ₹ 115.53 crore (82 *per cent*) during the period 2012-13 (upto Feb 2014) as detailed in **Appendix-I.**

National Highways Authority of India, Export Credit Guarantee Corporation of India Limited, Steel Authority of India Limited, Bharat Heavy Electricals Limited

13.4 Corrections/rectifications at the instance of audit

During test check, cases relating to violation of rules/regulations and ineffective planning in business operation were observed and brought to the notice of the management. Details of the cases where the changes were made by the management in subsequent years in their policies/procedures etc. at the instance of audit are given in **Appendix-II.**