CHAPTER II: MINISTRY OF CIVIL AVIATION

Airports Authority of India

2.1 Payment of Performance Related Pay due to non-adherence of conditions of 'Bell Curve Approach'

Due to non-adherence to the conditions of 'Bell Curve Approach' of DPE guidelines, the Airports Authority of India made an irregular payment of ₹38.78 crore for the years 2010-11 to 2016-17 to ineligible employees.

DPE vide its OM dated 26 November 2008, stipulated the admissibility, quantum and procedure for determination of variable pay/ performance related pay (PRP) to executives and non-unionised supervisors of Central Public Sector Enterprises (CPSEs). As per the OM, the payment of PRP would be directly linked to the profits of CPSE and performance of executives for which each CPSE was required to develop a robust and transparent Performance Management System (PMS). Further, the CPSE would adopt 'Bell Curve Approach' in grading the officers so that not more than 10 *per cent* to 15 *per cent* executives are 'Outstanding/ Excellent'. Similarly, 10 *per cent* of executives would be graded as 'Below Par'. In this regard, DPE vide its OM dated 06 July 2011 clarified that 'Bell Curve Approach' should be followed strictly and it was to be ensured that 10 *per cent* of the executives and non-unionised supervisors in a CPSE should be graded as 'Below Par' and not paid any PRP.

Airports Authority of India (AAI) approved the payment of PRP for the years 2010-11 to 2014-15, 2015-16 and 2016-17 on 27 October 2016, 16 October 2017 and 23 October 2018, respectively. The methodology adopted by AAI for the payment of PRP was not in conformity with the aforesaid DPE guidelines since the last 10 *per cent* should not have received any PRP. However, AAI modified the grading of last 10 *per cent* of 'Below par' category of employees in three sub-categories, i.e., Very Good, Good and Below Good and paid the PRP benefits at the rate of 60 *per cent*, 30 *per cent* and NIL respectively. Thus, only limited number of employees, who were sub-categorised as below good, did not receive PRP instead of all the employees under the last 10 *per cent* 'Below par' category.

As a result of non-adherence to the condition of 'Bell Curve Approach', payment of PRP amounting to ₹38.78 crore was made for the years 2010-11 to 2016-17[1] to ineligible employees, which was in violation of DPE guidelines.

Management replied (February 2020) that:

- Decision was taken by Manpower Advisory Board in order to keep up the moral of the executives and also to have harmonious relation in the organisation. Further, during the process of normalisation of PMS, in some cases the executives who had PMS grade as 'Very

[1] ***Bell Curve Approach was discontinued by DPE and new PRP model was effective from financial year 2017-18***

Good' were falling in 10 *per cent* of the lowest end of the bell curve. Therefore, the sub-categorisation of Very Good, Good and Below Good for such employees within 10 *per cent* category was proposed in line of other CPSEs, like, ONGC, NTPC, BHEL, MMTC, etc.

- Also, DPE vide its guidelines on pay revision with effect from 1 January 2017 decided to discontinue the forced rating of 10 *per cent* as below par/ poor performer.

- There has been no financial burden as PRP paid during the period 2010-11 to 2016-17 viz.-a-viz. availability of funds for the said period and eligibility for PRP was in consonance with the DPE guidelines.

Reply of Management is not acceptable in view of the following:

- As DPE specifically clarified vide its OM dated 06 July 2011 that 'Bell Curve Approach' was to be followed strictly and the CPSE was to ensure that 10 *per cent* of the executives and non-unionised supervisors in a CPSE were to be graded as 'Below Par' and not paid any PRP.

- The contention of Management that other CPSEs were following the same practice cannot be a justification for making irregular payment in violation of DPE guidelines. In fact, the issue relating to non-adherence to the conditions of 'Bell Curve Approach' of DPE guidelines was highlighted in CAG Compliance Audit Report No 13 of 2014, 21 of 2015 and 11 of 2018 etc. in respect of CPSEs like MECON, IOCL and ONGC etc.

- The focus of the draft para is on unjustified payment of PRP to ineligible 10 *per cent* executives with 'Below Par' rating which was in contravention of DPE guidelines. As such the contention of Management that there was no financial burden does not hold good. Additionally, Audit observation is limited to period prior to 1 January 2017.

Thus, as a result of non-adherence of condition of 'Bell Curve Approach' issued by DPE in relation to payment of PRP, AAI had made an irregular payment of ₹38.78 crore[2]. It is recommended that irregular payment made to ineligible employees may be recovered.

The para was issued to the Ministry in December 2019; their response was awaited (June 2020).

2.2 Short recovery of liquidated damages from a contractor

Undue favour to contractor by Airport Authority of India, Ranchi due to short recovery of liquidated damages amounting to ₹9.53 crore.

AAI Ranchi awarded (21 January 2009) the work of construction of New Integrated Passenger Terminal Building (NIPTB) at Birsa Munda Airport, Ranchi to M/s Ahluwalia Contracts (India) Limited (ACIL) at the contract price of ₹109.95 crore. The agreement was entered into between AAI and ACIL on 2 February 2009 with the stipulated date of completion being 30 January 2010. As per clause 32 of the agreement, in case of delay in completion of work, liquidated damages (LD) was to be levied at the rate of 0.5 *per cent* of

[2] ***2010-11 – ₹3.03 crore; 2011-12 – ₹2.57 crore; 2012-13 – ₹2.71 crore; 2013-14 – ₹5.73 crore; 2014-15 – ₹5.27 crore; 2015-16 – ₹7.16 crore; and 2016-17 – ₹12.31 crore***

the contract value per week of delay subject to a maximum of 10 *per cent* of the contract value.

The contractor could not complete the work and AAI issued show cause notice to the contractor in December 2010, i.e. 10 months after the stipulated completion. The work was finally completed on 21 June 2013 after a delay of 1,238 days. ACIL requested (October 2015) for grant of extension of time (EoT) up to 21 June 2013 without levy of LD, on the plea that AAI had not suffered any loss and the delay was caused by hindrances which were beyond their control. AAI, however, decided (November 2015) to grant EoT for 826 days (31 January 2010 to 5 May 2012) as justified period of hindrance without levy of LD and to levy compensation of ₹1.46 crore from the contractor for unjustified period of hindrances of 412 days (6 May 2012 to 21 June 2013). ACIL disputed the deduction of LD and matter was referred to Dispute Resolution Board (DRB) constituted (30 August 2016) by AAI. DRB recommended (July 2017) that EoT case may be reconsidered by AAI. AAI reanalysed the EoT and recommended (September 2018) no change in the earlier approved EoT.

Audit observed that as per the provisions of clause 32 of the contract, since ACIL was responsible for delay of more than 58 weeks (412 days) in completion of work, an amount of ₹10.99 crore (10 *per cent* of the contract value of ₹109.95 crore) was recoverable as LD from the contractor. AAI however recovered only ₹1.46 crore calculated on the basis of a technical circular issued by it (May 2013) for calculating cost implications in cases of EoT with unjustified delay. Thus, there was a short recovery of ₹9.53 crore from the contractor.

Management replied (November 2019) that the competent authority for grant of EoT, as per the contract agreement was Member (Planning) and the same authority issued the Technical circular to have uniformity for working out cost implications/ losses in such cases. The circular was also incorporated in the Works Manual. It, therefore, stated that the loss of ₹1.46 crore, for unjustified period was worked out in line with provision of the Contract Agreement, Technical Circular in-vogue and AAI Works Manual and there was neither short recovery of LD nor undue favour to the contractor. Management further replied that Arbitration on the matter where one of the claims is for refund of ₹1.46 crore is going on between ACIL and AAI.

Reply of Management is not acceptable in view of the following:

- Clause 32 of the contract clearly stipulated that the contractor was liable to pay LD as a percentage of the value of the contract. The terms of contract were agreed to by both the parties and, therefore, were binding on the contractor. The clause did not contain any reference to the Works Manual of AAI and thus, provisions thereto were not to be applied unless in the event of need for clarification of any matter.

- Further, though the competent authority for grant of EoT as per the contract agreement and that who approved the Technical Circular was the same, however, undue benefit was extended to the contractor by recovering a lower amount of LD from the contractor than that agreed as per the agreement. Moreover, the technical circular quoted in the reply was issued in May 2013 much later than the date of entering into contract with

ACIL in February 2009, and, therefore, cannot automatically override the terms of an agreement.

- The arbitration referred to in Management's reply was on certain claims of the contractor including claim for refund of ₹1.46 crore recovered as LD. The fact that the matter is under arbitration does not undermine the right of AAI to recover LD as per terms of the agreement.

Thus, the short recovery of LD amount of ₹9.53 crore by AAI, Ranchi for delays attributable to a contractor in completion of construction of NIPTB at Birsa Munda Airport, Ranchi was against the provisions of the contract and constituted an undue favour by AAI to the contractor.

The para was issued to the Ministry in December 2019; their response was awaited (June 2020).

Air India Limited

2.3 Irregular absorption by Air India Limited towards ground handling services charged by Air India SATS Airport Services Private Limited

Air India SATS Airport Services Private Limited (AISATS), a joint venture company of Air India Limited (AIL) is providing Ground Handling (GH) services to international and domestic airlines including Airline Allied Services Limited (AASL), a subsidiary of AIL, at Delhi, Bangalore, Hyderabad, Trivandrum and Mangalore. AIL borne the differential amount of GH charges to the tune of ₹44.88 crore for the services availed by AASL despite the fact that the revised lower rate was approved by Chairman, AISATS.

Section 177 of Indian Companies Act, 2013 stipulates constitution of Audit Committee by the Board of Directors of every listed company and such other class or classes of companies, as may be prescribed. As per sub-section 177(4) of the Act, every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board and specified certain items to be included in the terms of reference. In compliance with the requirement of Act, AIL constituted an Audit Committee and the Board of Directors approved its terms of reference, which *inter-alia,* included approval or any subsequent modification of transactions of the company with related parties.

AISATS, a joint venture company of Air India Limited (AIL), incorporated in April 2010, is providing GH services to international and domestic airlines at Delhi, Bangalore, Hyderabad, Trivandrum and Mangalore stations.

AISATS is also providing GH services to AASL, a fully owned subsidiary of AIL, at these five stations. The GH rate per flight charged by AISATS for AASL flights for the period 2011-2018, ranged between ₹9,258 and ₹34,000. AASL found these rates very high and requested (February 2016) Chairman, AISATS for reduction of GH rate to ₹5,000 per flight as were charged by AIL in the past and charged by Air India Air Transport Services Limited (AIATSL), another subsidiary of AIL providing GH services, at smaller stations. Chairman,

AISATS approved (February 2016) the revised GH rate to be charged to AASL by AISATS at ₹5,000 per flight departure.

Audit noted that though the request of AASL for revised lower rate was accepted by Chairman, AISATS, the difference between revised GH rate and earlier GH rate for the services availed by AASL during the period 2011-12 to 2017-18 (till December 2017), was charged to AIL in 2017-18 by AISATS. It was also noted that the GH services to AASL were charged at higher rates during the years 2016-17 and 2017-18, period subsequent to the approval by Chairman, AISATS for lower rates. Audit observed that AIL had borne the net impact of the revised rates, amounting ₹44.88 crore for the period 2011-12 to 2017-18 (till December 2017) for GH services not availed by AIL. This included the differential charges of ₹23.29 crore for the years 2016-17 and 2017-18, the period subsequent to the approval of Chairman, AISATS for applying lower rates for ground handling services to AASL. Audit further noted that the decision to absorb the differential amounting to ₹44.88 crore was taken by Air India management. As per the terms of reference to the Audit Committee duly approved by Air India Board, approval of Audit Committee is required for approval or any subsequent modification of transactions of the company with related parties, which was not complied with.

While accepting that AIL had absorbed the differential charges arising out of revised GH rate, Management replied (25 September 2019) that:

- In view of the request made by AASL on 5 February 2016, the then CMD conveyed his approval for Alliance Air to be billed based on rate of ₹5,000 per flight with retrospect effect.

- However, since AISATS had incurred all these expenses, the differential arising out of the aforesaid approval had to essentially be absorbed by AIL as these costs would in any case be attributable to AIL in the absence of AASL flights.

Reply of management is not acceptable in view of the following:

- AIL had borne the cost of GH services which were not availed by it. Moreover, the GH rate of ₹5,000 per flight was approved by Chairman, AISATS. The amount includes differential charges of ₹23.29 crore for the period subsequent to the approval by Chairman, AISATS. Further, the differential charges absorbed by AIL do not have approval of Audit Committee of AIL as required under Section 177(4) of the Companies Act, 2013.

- The contention of Management that the differential arising out of the approval had to be absorbed by AIL does not hold good since both AASL and AIL are two different entities and Alliance Air flights are fully operational.

Thus, AIL gave undue favour to AISATS by absorbing ₹44.88 crore, without proper authorisation, towards differential GH charges for services not availed by it from AISATS.

The para was issued to the Ministry in October 2019; their response was awaited (June 2020).

2.4 Undue favour to M/s Ballarpur Industries Limited by withdrawal of recovery proceedings pending final payment of dues

M/s Ballarpur Industries Limited failed to pay outstanding rent for the premises occupied in Air India Building. At the request of Air India, Collector's office started recovery proceedings and initiated attachment of private property of the tenant. However, Air India withdrew the recovery proceedings initiated by the Collector's office without any out of court settlement agreement and pending final payment of dues thereby granting undue favour to the tenant. An amount of ₹7.77 crore is still outstanding, realisation of which is doubtful.

M/s Ballarpur Industries Limited (the tenant) had been occupying an area admeasuring 2,632.39 sq. ft in Air India Building at Nariman Point, Mumbai. The Leave and License Agreement of the tenant was terminated in February 1995 and tenant was asked to hand over vacant possession of the premises on or before 31 March 1995. Since the tenant failed to vacate the premises as per termination notice, they were treated as unauthorised occupants effective from 1 April 1995.

The Estate Officer appointed in accordance with the Public Premises Act passed an eviction order on 20 May 1996. The tenant filed an appeal in the City Civil Court, Mumbai against eviction order, which was dismissed in June 2000. Further, the tenant preferred an appeal in Bombay High Court, which was also rejected in December 2000. The tenant vacated the premises on 30 June 2001. The Estate Officer conducted damage proceedings and passed an order (September, 2008) awarding damages/ mesne profits @ ₹300 per sq. ft. per month for the period from 1 April 1995 till 30 June 2001 (₹5.38 crore) along with simple interest @12 *per cent* p.a. for the period from 01 April 1995 to 31 March 2008 (₹6.36 crore) totaling to ₹11.74 crore and thereafter till the date of payment.

The tenant preferred an appeal in the City Civil Court against the mesne profits and the Court granted (August 2010) mesne profits @ ₹175 per sq.ft. from April 1995 to June 2001 with interest @12 *per cent* p.a. till realisation. The tenant preferred appeal in Division Bench, Bombay High Court, which refused (July 2011) to grant interim relief in the matter.

The Estate Officer requested (March/ June 2014) the Collector's office, Mumbai for recovery of dues to the Company. The Collector's office served (July 2014) notice of demand to the tenant. The tenant filed (August 2014) an application in Bombay High Court for setting aside Collector's attachment notice. The tenant also filed an affidavit/ Undertaking to the effect that they shall not alienate their premises (flat admeasuring 1720 sq.ft. situated at Prabhadevi, Mumbai valued at more than ₹10 crore) pending the hearing and final disposal of writ petition. The appeal was rejected (September 2014) and the Court granted time till the end of October 2014 to effect payment which was further extended till 9 January 2015. The tenant made an attempt to safeguard their interest by filing a Special Leave Petition in Supreme Court, which was dismissed on 27 January 2015. The tenant thereafter, deposited (March 2015) ₹1.25 crore with the Collector's office, Mumbai.

Air India, however requested (October 2015) the Collector's office not to pursue recovery proceedings/ attachment against the tenant and withdrew revenue recovery certificate issued in June 2014 for recovery of the remaining amount stating that the matter was being amicably

settled. Accordingly, Collector's office withdrew the recovery proceedings. However, the tenant did not settle the dues except one-time remittance of ₹1.50 crore in May 2016.

Audit observed that though Bombay High Court refused (July 2011) to grant interim relief/ stay in the matter, Air India initiated recovery proceedings with the Collector's office only in March 2014, after a delay of three years. Air India also erred by intimating Collector's office to stop recovery proceedings without entering into any out of court settlement agreement with the tenant and when the private property of the tenant had already been sealed by Collector's office.

Management replied (November 2018) that:

- The decision to stop recovery proceedings and withdraw the notice given to the Collector's office was taken based on an e-mail (dated 05 August 2015) of the tenant wherein it was requested to accept their proposal of ₹175 per sq. ft. with six *per cent* simple interest and withdrawal of the notice issued to the Tehsildar.

- This matter was put up to the Board at its 70th Meeting held on 23 November 2015 and the Board noted the same. Earlier, the Board in its 57th meeting held on 4 February 2014 had directed Air India to pursue out of court settlement in respect of disputes with evicted tenants.

- Out of court settlement appears to have been pursued with Ballarpur Industries in the above circumstances.

Management reply is not acceptable in view of the following facts:

- The tenant had not deposited the pending dues with the Company. Hence decision to stop recovery proceedings based on an email request was against the financial interest of Air India.

- Air India brought the tenant's proposal for out of court settlement to the notice of the Board in its meeting held on 23 November 2015. However, the Board was not informed about Air India's decision to stop recovery proceedings. Moreover, the Management directed the Collector's office not to pursue recovery proceedings against the tenant in October 2015. Thus, Management took the decision before Board was apprised of the matter relating to out of court settlement.

- Approval of the competent authority to direct the Collector's office stopping recovery proceedings was neither found on record nor clarified by the Company.

Thus, Air India could not recover the remaining dues from the tenant amounting to ₹7.77 crore (December 2019), realisation of which is doubtful. Air India's decision to withdraw recovery/ attachment proceedings without receiving outstanding dues from the tenant was not in the best financial interest of the company and tantamount to undue favour to the tenant.

The para was issued to the Ministry in December 2019; their response was awaited (June 2020).