

**GOVERNMENT OF ASSAM  
FINANCE DEPARTMENT  
DISPUR :: GUWAHATI, 06**

**OFFICE MEMORANDUM**

No. Fin (EC-III).1808/2018/2

Dated Dispur, the 14<sup>th</sup> June 2019

**Subject: Recovery of wrongful /excess payments made to the Government Servants**

1. Finance Department has received several proposals from the Administrative Departments seeking view on the recovery of excess drawal of emoluments than the entitlements of the employees, especially at the time of finalization of the pension papers of the incumbents.
2. In this connection, reference is drawn to the Govt. of India O.M. F.No.18/03/2015-Estt. (Pay-I) dtd. 2<sup>nd</sup> March, 2016.
3. The issue had come up for consideration before the Hon'ble Supreme Court in the case of State of Punjab & Ors --vs- Rafiq Masih (White Washer ) etc. in CA No. 11527 of 2014 (Arising out of SLP© No. 11684 of 2012 ) and was decided by the Hon'ble Court on 18.12.2014.
4. The Hon'ble Supreme Court while observing that it is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement, has summarized the following few situations, wherein recoveries by the employers would be impermissible in law :-
  - i. Recovery from employees belonging to Class -III and Class-IV service (for Group 'C' and Group 'D' service).
  - ii. Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
  - iii. Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
  - iv. Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
  - v. In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would for outweigh the equitable balance of the employer's right to recover.
5. All Departments are to act in accordance with the above stipulations while deciding cases of wrongful/excess payments.
6. However, 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.
7. 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. Reasons for the decision should be clearly conveyed so as 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.

Contd.

8. Whenever any excess payment is 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.
9. However, when the waiver of recovery in the above mentioned situations is considered, Pension and Public Grievances Department is empowered with financial ceiling of Rs.1.00 Lakh (Rupees One Lakh) in each individual case where recovery is to be waived, and beyond Rs.1.00 Lakh (Rupees One Lakh) the express approval of Finance Department is to be obtained.
10. This O.M. will be applicable to all pending cases of wrongful/excess drawal as on 18.12.2014 (i.e. date of judgment in CA No. 11527/2014).

Sd/-

(Samir K. Sinha, IAS)  
Principal Secretary to the Government of Assam,  
Finance Department

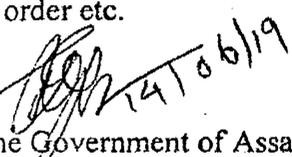
Memo No. Fin (EC-III).1808/2018/2-A

Dated Dispur, the 14<sup>th</sup> June 2019

Copy forwarded to:-

1. The Principal Secretary to Hon'ble Chief Minister, Assam, Dispur.
2. The Private Secretary to all Hon'ble Ministers/ Minister of State, Assam, Dispur.
3. The S.O. to the Chief Secretary to the Government of Assam, Dispur.
4. The Chairman, Assam Board of Revenue, Panbazar, Guwahati.
5. The Chairman, Assam Administrative Tribunal, Dispur.
6. The Additional Chief Secretaries to the Govt. of Assam, Dispur.
7. The Accountant General (A & E), Assam, Beltola, Guwahati.
8. All Principal Secretaries/ All Divisional Commissioners/ Commissioners & Secretaries/ Head of Departments/ Deputy Commissioners/ Sub Divisional Officers (Civil) /Treasury Officers.
9. Principal Secretaries, Karbi Anglong Autonomous Council / Dima Hasao Autonomous Council/ Bodoland Territorial Autonomous Council.
- ✓10. Finance (eGU) Department for uploading the O.M.
11. The Director of Pension, Housefed Complex, Dispur, Guwahati-06.

By order etc.

  
Additional Secretary to the Government of Assam,  
Finance Department