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Loss on account of misappropriation
of Government money/property

Measures to prevent the -
and action to be taken when such
cases occur.

GOVERNMENT OF MAHARASHTRA,
Urban Development, Public Health & Housing Department,
Circular No. PAC-1074/14242-PAC,
Secretariat, Bombay-32.

Date : 22nd November 1974.

The cases of misappropriation, embezzlement and loss of Government money appear every year in the Audit Report. Instructions have been given in the Bombay Financial Rules, 1959, as also in Departmental manuals and orders of Government issued from time to time how incidents of misappropriation should be prevented by following proper safeguards and procedure laid down for handling cash or other valuable property, and how such cases, when they do take place should be handled promptly with a view to recovering the money lost from the person/persons concerned and punishing them suitably. However, in spite of these instructions the cases involving misappropriation or loss of Government money continue to occur. In many a case, it is seen that the misappropriation or loss of Government money had resulted from the failure on the part of the persons concerned to follow the appropriate rules laid down for handling cash or valuable articles. In other cases, it is seen that misappropriation or loss of money was facilitated because the officers, whose duty it was to exercise supervision over those in the custody of cash or surrender of valuable property, etc. were at lax in their supervision in that they did not discharge their primary responsibility in this regard. Lastly, when the cases of misappropriation take place, it is seen that the Departmental Officers do not follow the rules and orders issued by Government in this regard with the result that these cases instead of being finalised expeditiously continue to drag on for years, so that with the passage of time recovery of the defalcated money is rendered difficult or impossible and other officers/persons who are indirectly responsible for the misappropriation escape punishment e.g. by their retirement etc. due to the defaults committed by the Departmental Officers.

2. Government and the Public Accounts Committee before which these cases ultimately come up attach very great importance to the expeditious settlement of these cases. The Public Accounts Committee has in particular come across cases wherein there was inordinate delay on the part of the Departmental Officers in following these cases with the seriousness they deserved. Thus the Committee has noticed several instances wherein ~~the~~ either prosecution of the delinquent was delayed or there was delay in initiating departmental proceedings against the delinquents and supervisory officers. Such cases have attracted severe criticism at the hands of the Committee. At the instance of the Public Accounts Committee several orders have been issued by Government in misappropriation cases impressing upon the Officers concerned the need to pursue such cases promptly and finalise them quickly.

3. The attention of the Heads of Departments/Offices, is ~~once again~~ invited to the provisions of the Bombay Financial Rules 1959, which contain instructions both for preventing misappropriation, embezzlement and loss of Government money, and for dealing with such cases when they take place. They are also requested to refer to various orders of Government issued from time to time and to check up the existing arrangements obtaining in the offices for safe custody of Government money which they are required to handle or keep in their custody and should personally ensure that they are adequate, satisfactory and fool proof. The Heads of Departments/Offices are also requested to impress upon the supervisory officers entrusted with the duty of exercising supervision over persons handling cash or other valuable articles on behalf of Government, the importance of periodical inspections and/or checking of cash, valuable articles, mudderval, and account books relating to cash, etc., so that misappropriation of Government money is not rendered easy by lax supervision on their part. The Heads of Departments/Offices are also requested to make it clear to these officers that if it is established in any case that it was the lax supervision on their part, which facilitated misappropriation or loss of Government money, severe action would be taken against the persons. (116)

4. For ready reference of the Heads of Departments/Offices, some important steps to be taken for safeguarding Government money and for the recovery of the misappropriated money are indicated below. As stated above, they are requested to refer to the provisions of the Bombay Financial Rules 1959, and other orders of Government issued from time to time for detailed procedure in this regard.

(A) Measures to prevent embezzlements, thefts etc.

(1) Whenever it is necessary to send a peon to encash bill of establishment or to send money with him for crediting it into Treasury, etc., the work should be entrusted to a trustworthy person with long service. Where the amount exceeds Rs. 200/- two persons should be sent. If the amount is in excess of Rs. 5,000/- one of the persons must be a clerk or a cashier. (Rule 54 of the Bombay Financial Rules, 1959).

(2) Security Deposits: Cashiers, store keepers, sub-store keepers and subordinates entrusted with the Collection or custody of cash, stores, stamps etc. should be required to furnish security in one of the forms mentioned in Section XIII of the Bombay Financial Rules 1959. (Rule 51 of the Bombay Financial Rules 1959).

(3) Surprise checks of Cash Section: The Heads of Office should make surprise check of the cash Section once month and certify that the cash balance with the cashier is in order.

(Government Resolution, Finance Department no. FWR-1039/P-4, dated the 10th August 1959).

(4) Columns 6 and 7 of the Bill Register (Form Maharashtra Treasury Rules-26) should be filled in as soon as the bills are passed by the Treasury and for this purpose the messengers carrying the bills to the Treasury should be instructed to bring all passed bills first to the Drawing Officers for the completion of columns 6 and 7 of the Bills Register before the bills or cheques are sent for encashment and (ii) that when the payment of bill is not made...

but is to be made by a bank draft the drawing officers should invariably attach the application for draft to the bills itself, so that the Treasury may enforce a pay order accordingly, thus reducing chances of misappropriation of Government money.

(Government Circular, Finance Department, D&T-1163/5252/69-X, dated the 5th January 1970).

(B) Steps to be taken in dealing with misappropriation cases :

(a) First report :- As soon as any loss of money or misappropriation of Government money is noticed, a report should be submitted to Government and the Accountant General in terms of Appendix 20 of the Bombay Financial Rules, 1953.

The Heads of Departments/Offices should also submit a detailed report in form 'A' and monthly reports in form 'B' stating the periodical progress of the case.

(Government Circular, Finance Department No.P-253/621/69/VII, dated the 30th May 1963, Government Circular, Home Department No.OOD-1667/64044-XIII, dated the 4th February 1970).

(b) Action after the first report :- Immediately, thereafter the cases should be processed by taking various steps like investigation and prosecution described in Section II of the said Appendix 20 of the Bombay Financial Rules and a full report indicating persons, if any, responsible for the loss or misappropriation should be sent to Government and the Accountant General. In all cases of fraud, misappropriation, embezzlement and in similar cases involving loss of Government money, etc., departmental proceedings against the delinquents should be instituted at the earliest possible moment and every effort should be made to determine the exact amount involved and the responsibility of the delinquents with a view to recovering the loss from the delinquents concerned as quickly as possible.

(Government Circular, Finance Department No.1361/1074/(3)-VI dated the 6th August 1964, Government Circular, Finance Department No.PAC-1365/1204(2)-VII, dated the 23rd June 1965).

(c) Avoidance of delay in instituting suits for the recovery of misappropriated amount :- The advice of the Legal Adviser, if necessary should be obtained at the District level itself i.e. the level of District Legal Adviser unless the matter is of considerable difficulty or a general point of importance is involved. Reference should be made to the R.L.A. under the provision in Rule 20(4) of the Law Officers (Conditions of Service) Rules in respect of those cases where the subject matter involved is more than Rs.5,000/-

(Government Circular Memorandum, Finance Department No.PAC_1363/2592/VII, dated the 2nd January 1964)

(d) Departmental enquiry should be instituted simultaneously with the prosecution :- In the cases of misappropriation or loss of money, the Heads of Departments invariably defer Departmental proceedings on the ground that criminal offence is registered for misappropriation and it is under investigation. This view is not correct as the Bombay Financial Rules, 1953, clearly envisage that Departmental

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enquiry has to be instituted even when prosecution is or is likely to be instituted. To avoid any misunderstanding on this score, some of the provisions of Section III of Appendix 20 of the Bombay Financial Rules, 1953, which deal with this question are reproduced below for information and guidance of all officers.

1. It is desirable to explain as clearly as possible what is necessary to be done in the way of departmental enquiry where a prosecution is, or is likely to be, instituted. It has been found that, where fraud or embezzlement of Government funds has occurred, there is a tendency for the head of office or department to regard the institution of criminal proceedings as absolving him from the unpleasant and often labourious task of conducting immediately a thorough departmental enquiry. This natural reluctance may be enhanced by an apprehension that an enquiry may prejudice the result of the trial in a Court of law. As a result, there has come times been great delay in taking departmental proceedings and the results have been inconclusive. Departmental enquiries should not necessarily be delayed pending decision of criminal cases, as at a later stage the evidence might disappear and the departmental enquiry cannot be brought to any conclusion at all.

2. Experience shows that departmental proceedings cannot as a result proceed concurrently with a criminal prosecution. Much of the evidence in a case of fraud or embezzlement is documentary. As soon as the criminal proceedings begin, the documents go to the Court as exhibits, and there they must remain till the case is over and (if an appeal is filed) till the appeal is over. But it is essential that everything should be done to carry the departmental proceedings as far as possible before prosecution begins. The stage to which departmental proceedings, prior to prosecution, should be taken must depend on circumstances and cannot be precisely defined. The normal procedure is laid down in Rule 55 of the Civil Services (Classification, Control and Appeal) Rule and the stage which departmental proceedings can reach may according to circumstances be any one of the stages described or implied in the Rule 1, i.e., the preliminary recording of evidence, the receipt of the delinquent's written statement after the framing of a charge, the personal hearing, or the enquiry. If it is intended to prosecute, a finding and sentence should not be recorded in the departmental proceedings till after the disposal of the criminal case; but it must be emphasised that the proceedings should be completed upto the point that can properly be reached.

3. A common type of case is that where a number of persons are involved one or more criminally, and others in such circumstances as show negligence, or warrant the suspicion of criminal abatement without sufficient proof to justify prosecution, or have similar features which necessitate a criminal prosecution of one or more and a departmental enquiry against others. In such cases the authority has sometimes neglected to institute a formal departmental enquiry, or to carry it to the requisite stage, before criminal proceedings are taken, with the result that many months later, when the criminal case is over, effective departmental action has been found impracticable.

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4. The general rule should be that in all cases of fraud, embezzlement, or similar offences, departmental proceedings should be instituted at the earliest possible moment against all the delinquents and conducted with strict adherence to the Rules up to the point at which prosecution of any of the delinquent begins. At that stage it must be specifically considered whether further conduct of the departmental proceedings against any of the remaining delinquents is practicable, if it is, it should continue as far as possible (which will not, as a rule, include finding and sentence)

If the accused is convicted, the departmental proceedings against him should be resumed and formally completed. If the accused is not convicted, the departmental proceedings against him should be dropped unless the authority competent to take disciplinary action is of the opinion that the facts of the case disclose adequate grounds for taking departmental action against him. In either case, the proceedings against the remaining delinquents should be resumed and completed as soon as possible after the termination of the proceedings in doubt.

(e) Suspension of the person/s responsible withholding of D.A. and other allowances, etc.:

If the preliminary investigation establishes that a particular person has misappropriated the money, it should be considered whether he should be placed under suspension pending completion of the disciplinary action/prosecution. If he is placed under suspension. It is permissible to withhold payment of the dearness allowance. The payment of d.a. should be withheld (and not appropriated) until the case against the persons concerned is decided. In case the person concerned is ultimately found to be not guilty and not responsible for the misappropriation or loss, the amount of d.a. withheld should be paid back to him. If otherwise, the amount should be adjusted against the recovery to be effected from him.

(Government Circular, Political and Services Department No. CDR-1053, dated the 16th March 1953.)

The Competent Authority may in its discretion withhold H.S.A. and C.L.A. also in addition.

(Rule 152 Bombay Civil Services Rules).

(f) Voluntary deduction of money :-

The person responsible for the misappropriation or loss of money should be called upon to pay the amount and if he agrees, the amount should be recovered by deductions from his salary. If he does not agree, the usual procedure of departmental enquiry/prosecution should be followed.

Note : The intention of these instructions is that in cases of misappropriation or loss of Government money or property, recovery of loss from the persons concerned should not necessarily be postponed till prosecution and/or departmental enquiry against the delinquent is finally completed. Where the person concerned is willing to make good the loss voluntarily, the amount should be recovered from him even on the basis of the facts established in a preliminary enquiry. By such recovery, launching of the prosecution against him in a Court of law or the conduct of a departmental enquiry against him

is not intended to be dropped. Where the person is not identified, it is necessary to effect recovery only after the charge of misappropriation is established in a Court of law or in a departmental enquiry. Voluntary recovery of the misappropriated money and his prosecution in a Court of law are not conflicting actions as the prosecution is for the criminal action involved and not for recovering the money misappropriated. (120)

(Government Circular, General Administration Department, No. 30A-1172/2413/D-I, dated the 6th September 1978.)

(g) Communication of details of credits to Audit :

The authorities dealing with misappropriation cases should ensure that the details of credits towards the recovery of CMA, amount misappropriated are communicated to the Audit from time to time without delay so as to keep its record up-to-date and to avoid discrepancies between the Departmental and Audit records.

(h) Action against supervisory officers :

In cases, where loss is due to delinquencies of subordinate officials and where it appears that this has been facilitated by laxity of supervision on the part of a superior officer, the latter, should also be called strictly to account and his personal liability in the matter carefully assessed. If there is a prima-facie case of lack of supervision or failure to observe the instructions issued by Government facilitating the misappropriation or loss, — simultaneously with the institution of proceedings whether departmental or criminal, against the person directly responsible for the misappropriation/loss, departmental proceedings should also be initiated against the supervisory officer/officers.

The question of enforcing pecuniary liability should always be considered as well as the question of other forms of disciplinary action. In deciding the degree of the officer's pecuniary liabilities it will be necessary to look out not only to the circumstances of the case but also to the financial circumstances of the officer, since it should be recognised that the penalty should not be such as to impair the Government Servant's ~~future~~ future efficiency.

(i) (Appendix 29 of the Bombay Financial Rules, 1955). J

(i) Expeditions finalisation of misappropriation cases :

It is absolutely necessary to avoid delay in the investigation of cases involving loss of Government money or property due to fraud, misappropriation, embezzlement, negligence, etc., since inordinate delays in dealing with such cases are apt to result in non-availability of relevant records and consequently the work of taking suitable action against the defaulting officers is rendered difficult. The Heads of Department and Officers should therefore, ensure that investigations in such cases are conducted expeditiously and are not allowed to be unduly prolonged for any reason whatsoever. They should further ensure that cases involving loss of Government money or property are thoroughly investigated (a) with a view to finding out whether and to what extent the loss was facilitated by any loopholes or defects in the system or procedure and how to remedy them, and (b) in order that it might be possible to fix responsibility and to determine whether and to what extent the loss can be recovered from the delinquents directly.

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responsible for the loss in proportion to the responsibility fixed having regard to other relevant factors and consideration as per instructions contained in the Appendix 20 to the Bombay Financial Rules i.e. nature of the loss, circumstances leading to the loss, capacity of the Government servant to pay, etc. (12)

(Government Circular, Finance Department No. PAC-1360/100031/B-2, dated the 20th January, 1960.)

Government Circular, Finance Department No. PAC-1361/421111 (1) -VII, dated the 19th July 1961.

Government Circular, Finance Department No. PAC-1365/1204(1)-VII, dated the 22nd June 1965.)

Government Circular, Finance Department No. PAC/11/(111)/P-2, dated the 6th April, 1973.

(j) General instructions of Government :

(i) Government has issued orders impressing upon all concerned the necessity of dealing promptly, strictly and adequately in all cases of dereliction of duty leading to loss of Government money irrespective of the officer's rank.

(Government Circular, Finance Department No. PAC-1360/10031(6)/BI, dated the 20th January 1960)

(ii) All officers should take into consideration the penalties pending against the individuals concerned, for loss of Government money or property due to frauds, misappropriation and other serious financial irregularities before giving them the benefit of promotion, increments or permission to retire.

(Government Circular, Finance Department No. PAC-1362/(3)-764-VII, dated the 27th April, 1962)

(iii) Where inordinate delay has occurred in the institution of departmental enquiry of frustration of misappropriation cases in the past, the concerned Administrative Departments of the Secretariat should investigate the matter with a view to fix responsibility for delay. Suitable action should also be taken against such officials who are held responsible for the delay. All such cases should be referred to the Finance Department.

(Government Circular, Finance Department No. PAC-1369/394(III)/VII, dated the 5th April 1969).

(k) Review of the position of misappropriation cases pending for want of completion of police investigation.

The Heads of Departments/Offices should review at least every half-year, the position of misappropriation cases pending for want of completion of police investigation and submit a report to Government in Home Department stating the result of the review reasons for which the investigation is pending, and steps taken to expedite it.

(Government Circular, Home Department No. P-373/34607-XV, dated the 5th February, 1972),
 Government Letter, Home Department No. P-373/34607-XV-Cell, dated the 5th October 1972,
 Government Circular, No. P.S-1373/11(111)/F-2, dated the 6th April 1973.)

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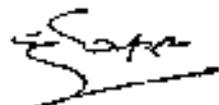
(1) Disposal of cases involving loss of Government money or property.

Government has directed in the past that administrative steps regularly to be taken to bring the delinquents to book e.g. departmental enquiry or prosecution, etc., should be pursued by the officers concerned as prescribed under the rules vide Appendix 20 to the Bombay Financial Rules, 1950. In order to ensure that such administrative steps regarding disciplinary action against the delinquents have been taken promptly and adequately, all Heads of Departments/Offices are requested to furnish their Administrative Departments a six monthly report for the period ending the 30th September in the prescribed proforma by the 15th April and 15th October every year.

(Government Circular, Finance Department No. P.S-1072/945/F-2, dated the 23rd October 1972.)

5. The Heads of Departments/ Offices are requested to bring the above instructions to the notice of the persons concerned and ensure strict compliance with same. They are also requested to take action as in paragraph 3 above and report compliance to Government.

By order and in the name of the Governor of Maharashtra,



(Yashwantrao Chavan)

Under Secretary to Government of Maharashtra.

- To:
- All Heads of Departments & Heads of Offices Under Urban Development, Public Health and Housing Department,
 - All Stations/Branches in Urban Development, Public Health and Housing Department,
 - The Accountant General, Maharashtra I, Bombay,
 - The Accountant General, Maharashtra II, Nagpur,
 - The Finance Department (Fr. F-2)
 - The Director of Accounts and Treasuries, (Store Verification), etc.

No. 12 ST/11/9
 19-10-1973

Serial 611

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 ... & necessary action.

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