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GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Misappropriation cases –Consolidated Guidelines Issued.

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GENERAL ADMINISTRATION (SRI C) DEPARTMENT

G.O.Ms.No.25 **Date: 3-2-2004.**

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Read the following :-

1. Memo. No. 3000/Ser.C/76-4, G.A.(Ser.C) Department dt. 28-6-1977.
2. Memo. No. 2106/Ser.C/77-1, G.A.(Ser.C) Department dt. 27-10-1977.
3. Memo. No. 2261/Ser.C/79-2, G.A.(Ser.C) Department dt. 23-10-1979.
4. U.O. Note No.646/Ser.C.80/, G.A. (Ser.C) Department. dt. 21-7-1980.
5. U.O. Note No.32/Ser.C/81-2, G.A. (SDer.C) Department. dt. 9-2-1981.
6. G.O.Ms.No.260, Genl. Admn. (Ser.C) Deptt.Dt. 24-4-1984.
7. U.O. Note No.463/Ser.C/85-4 G.A. (Ser.C) Dept. Dt.20-12-1995.
8. Circular Memo No. 100/Ser./93-22, G.A. (Ser.C) Dept. dt. 23-12-1995.
9. G.O.Ms.No. 2,G.A.(Ser.C)Dept .Dt . 21-9-1999.
10. Memo.no.44391/Sr.C/99-G.A.(Ser.C)dept t.Dt. 21-9-1999.
11. U.O.NoteNo.1067/L&O-1/A1/2000-4, G.A.(L&O) Deptt.Dt. 30-12-2000.
12. Memo.No.51375/Ser.C/2002-2,G.A.(Ser.C)Department.Dt.28-11-2002.

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ORDER:-

Apart from the instructions issued on the subject matter, a critical study of cases of misappropriation of Government funds undertaken by the Andhra Pradesh Vigilance Commission revealed that many of these cases are handled ineptly and with prolonged delay without (1) being reported to the Head of the Department and to the Accountant General, (2) finalisation of the total amount misappropriated through a thorough verification or audit of the accounts (3) earnest efforts to realise the misappropriated amount, (4) immediate suspension and effective prosecution of the officers who have indulged in misappropriation (5) simultaneous initiation of timely disciplinary action against the accused officers, and the officers whose supervisory negligence lead to the misappropriation. Where action has been taken attempt is often made to show the embezzlement as temporary diversion of funds particularly where the amount has been remitted back upon detection or where the amount involved is small thereby reducing the gravity of the offence and facilitating the culprits being let off with minor penalty. Some departments / head of offices have been found to address the Superintendent of Police wrongly without a formal criminal complaint being filed before the Station House Officer having jurisdiction, as soon as the case of misappropriation come to notice without internal audit to finalise the amount misappropriated and without identifying the persons responsible. Such complaints lie there for want of basic information and records necessary to finalise the quantum of misappropriation and to identify the accused officers. There are cases where those responsible for misappropriation were not even suspended and allowed to continue in the same post giving them an opportunity to destroy the records and evidence and to obstruct smooth conduct of investigation.

2. The Report of the Comptroller and Auditor General of India for the year ended 31-3-2002 refers to 605 misappropriation cases reported to it as pending at the end of the year involving a sum of Rs. 1062.69 lakhs as pending in different departments.

According to the Vigilance Commission this does not reflect the correct position of pendency of such cases due to serious omissions in reporting of misappropriation cases to the Accountant General as provided in the A.P. Financial code. According to the Commission the number appear to be several times more. As a case in point, the Commission has brought to the notice of the Government that the number of misappropriation cases shown as pending in the Treasuries and Accounts Department in the above list of misappropriation cases was 12, whereas Commission came across 10 more cases of misappropriation in that Department which had not been reported. Information elicited from the Commissioner and Registrar of Cooperative Societies shows that there were 2314 misappropriation cases in the various cooperative institutions in the state involving a sum of Rs. 19.86 crores of which only Rs. 7.05 crores have so far been recovered in which criminal action was initiated in 945 cases. The Commissioner, Panchayat Raj has reported that, there were 940 cases of misappropriation involving a sum of Rs. 15 crores in which criminal action was initiated in 517 cases where recovery effected was Rs. 1.59 crores. The above figures indicate the magnitude of the problem of misappropriation in Government institutions.

3. The Commission therefore, emphasized the need to lay down streamlined procedure to facilitate effective handling of misappropriation cases with particular attention to (1) prompt reporting (2) quick finalisation of amounts misappropriated (3) Immediate identification of the persons responsible for the crime (4) fool proof handling of records (5) speedy recovery of funds misappropriated (6) prompt criminal prosecution of the accused (7) pinpointing responsibility for failure of supervision (8) timely disciplinary action against the accused officers and those whose supervisory negligence lead to the misappropriation (9) streamlining procedures to prevent recurrence of similar cases in future and (10) finally laying down strict guidelines for statutory penalties t o the offers found guilty of misappropriation in Government Departments, Local bodies, Cooperatives,/Autonomous Grant Receiving Institutions and Public Undertakings etc.

4. Articles 5,273, 294, 300, 301 and 302 of the Andhra Pradesh, Financial Code lays down the responsibilities of Govt. Servants in dealing with Government money, the procedure to fix responsibility for any loss sustained by the Government, the procedure to be followed and the action to be initiated for recovery. In addition to the instructions laid down in the Andhra Pradesh Financial Code, the Government have from time to time, issued executive instructions regarding misappropriation cases. It is now felt necessary to plug the loopholes in the management of Government money and to give clear and comprehensive instructions on all aspects of misappropriation cases. Accordingly the following consolidated instructions are issued.

5. **<u>Standards of financial responsibility</u>** :-

Article 5 of the A.P. Financial Code cast s an obligation on every Government servant to see that proper accounts are maintained for all Government Financial transaction with which he is concerned and to render accurately and promptly all such accounts and returns relating to them as may have been prescribed by Government, the Accountant General or the competent departmental authorities. He is required to check the accounts, as frequently as possible, to see that his subordinates do not commit fraud, misappropriation or any other irregularity. The government holds him personally responsible for any loss that may be found to be due t o any neglect to the duties laid upon by him by the relevant provisions made by the Government. The fact that a government servant has been misled or deceived by a subordinate will in no way mitigate his personal responsibility.

6. **Assessment of responsibility for loss of public funds**:-

Article 273 of A.P. Financial code makes a every Government servant personally responsible for any loss sustained by the Government through fraud or negligence on his part and also for any loss through fraud or negligence on the part of any other Government servant to the extent to which it may be shown that he contributed to the loss by his own action or negligence. The cardinal principle governing assessment of responsibility for such losses is that every Government Servant should exercise the same diligence and care in respect of all expenditure from public funds under his control as a person of ordinary prudence would exercise in respect of the expenditure of his own money.

7. Reporting of loss public money and sending factual report to Government

When any fact s indicating that defalcation or loss of public money, stamps, stores or other movable or immovable property has occurred or that a serious account irregularity has been committed come to the notice of any Government Servant, he should in terms of Article 294 of the Financial code inform the head of the office immediately. If it appears to the head of the office, prima facie that there has been any such occurrence which concerns his office or in which a Government Servant subordinate to him is involved, he should send a preliminary report immediately to the Accountant General and through the proper channel, to the head of the department. On receipt of the information, the head of the Department should report the matter to the Government without delay. These reports should be sent even when the loss has been made good irrespective of the amount involved.

8. Finalisation of quantum of loss and audit of accounts :

Article 300 of the Financial Code lays down the following general principles in enforcing responsibility of the government servant for a loss sustained by the government through fraud or negligence on his part and also for loss through fraud or negligence on the part of any other Government servant to the extent to which it may be shown that he contributed to the loss by his own action or negligence. The head of the Office or other appropriate authority should investigate the matter fully without delay. When necessary, the administrative authority may ask the Accountant General to furnish all vouchers and other documents in his possession that may be relevant to the investigation. If the investigation is so complex as to require the assistance of an expert audit officer, the administrative authority should report the fact s to the Government and request them to depute an audit officer for the purpose. The administrative authority and the audit officer will each be personally responsible within their respective spheres, for completing the investigation expeditiously.

9 Recovery:-

Whenever an administrative authority holds that a Government servant is responsible for a loss sustained by the Government it should consider both whether the whole or any part of the loss should be recovered from him in money and whether any other from of disciplinary action should be taken. Whenever a loss is held to be due to fraud on the part of a Government Servant or servants, every endeavor should be made to recover the whole amount loss from the guilty persons. If the failure of a superior officer to exercise proper supervision and control has facilitated the fraud, he should be called strictly to account and suitably dealt with after carefully assessing his personal liability in the matter.

The pension of a retiring Government Servant who is involved in any loss or irregularity which is under investigation should on no account sanctioned until his responsibility in the matter has been finally determined. Whenever a competent authority orders that any amount should be recovered from the Government Servant, otherwise than by forfeiture of his security deposit, if any, on account of a loss sustained by the Government through fraud or negligence on his part and he is about to retire from service the amount should be recovered, as far as possible, by deduction from the last pay or leave salary due to him. If any amount still remains to be recovered, the Government servant should be asked to give his written consent to the recovery of the remaining amount from his pension. When a retired Government Servant whose pension has already been sanctioned is held to have caused a loss to the Government by his fraud or negligence while in service and it appears that the amount could be recovered by bringing a suit against him, the matter should be reported to the Government for orders . Any fraud or negligence found to have been committed by him while in service, should not be made an excuse for absolving any other Government servants who are also responsible for the loss and are still in service.

10. A clear distinction should be drawn between cases of "delayed remittance" and misappropriation. The cardinal test to prove a case as a case of misappropriation rather than temporary misappropriation would be whether the amount has been put to use for the benefit of the person who has misappropriated it. It is the intention and purpose that should be the criterion and not whether the amount has been ultimately made good voluntarily.

11. If there is a reasonable suspicion that a loss sustained by the Government is due to the commission of a criminal offence, the procedure prescribed in Article 301 and 302 should be followed:

12. An officer accused misappropriation shall be suspended forthwith under Rule 8 (1) (C) of the Andhra Pradesh civil (Civil C &A) Rules, 1991 pending investigation or trial of the offence till he is dismissed or removed from service upon conviction or conclusion of disciplinary proceedings as the case may be.

13. Initiation of Departmental inquiries and Criminal proceedings:

Article 301 lays down that department proceedings should be instituted at the earliest possible moment against all the government servants involved in any loss sustained by the Government on account of fraud, embezzlement or any similar offence and conduct with strict adherence to the rules, up to the point at which prosecution or any one of them begins. The departments should ensure that charges are framed by the disciplinary authority in accordance with the procedure prescribed under the rule 20 of Andhra Pradesh Civil Services (Civil C&A) Rules, 1991 and action is completed expeditiously observing the prescribed procedure to ensure that there are No. procedural infirmities. The criminal proceedings and departmental action should be processed without loss of time with a view to avoiding manipulations and loss of evidence. Departmental officers should obtain Photostat copies of documents and handover the original to Police so that simultaneous action in regard criminal proceedings and disciplinary action can be taken. Departmental action should be completed within 3 to 4 months .At this stage it maybe specifically considered whether it is practicable to carry the departmental proceedings without waiting for the results of the prosecution, if it is so, they should be carried out as far as possible but not as a rule, to the stage of findings and sentence. If the accused is convicted the departmental proceedings against him should be resumed and formerly completed.

If the accused is not convicted, the authority competent to take disciplinary action should examined whether the facts of the case disclose adequate grounds for continuing departmental action against him. Simultaneous disciplinary and criminal proceedings can be initiated by the Department against the persons responsible for misappropriation and supervisory officers whose failure lead to the offences. Following the decision of the Himachal Pradesh High Court in Khushiram Vs. Union of India (11973) (2) SLR.PP 564-565) it is not obligatory that the departmental proceedings should be stayed when the case is pending in a court of law, except when it is expedient to do so in the interest of fair play.

14. Procedure for filing of complaints with local police or the Crime investigation Department.

Prosecution for embezzlement of public money or property is laid down in Article 302, Whenever the head of an office finds that there is a reasonable suspicion that a criminal offence has been committed in respect of public money or property, he should has a general rule report the matter at once to the Police and the head of his Department that he has laid an information before the police. When the case is heard by the Court , the head of the office concerned should see that all the witnesses serving in his department and all documentary evidence in the control of his department are punctually produced . He should also appoint a Government servant of the Department to attend the proceedings in the Court and assist the prosecuting staff. If prosecution for an offence of this kind results in the discharge or acquittal of any person, or in the imposition of any sentence which appears to be inadequate, the head of the office concerned should at once send a full statement of the facts of the case. If it is considered that further proceedings should be taken in revision or appeal, he should proceed accordingly.

15. In order to reduce the number of cases of misappropriation sent for investigation by the Police and prosecution thereafter, a monetary limit of Rs.1000/- is fixed below which the cases will be handled departmentally only. The Department should ensure that all material needed for investigation is made available to the Station House Officer of the Police station having jurisdiction. In the event Crime Investigation Department investigation is considered essential in view of the quantum of money involved or the complexity of the misappropriation case action should be taken by the Secretariat Department concerned to refer the case to the criminal investigation department at Hyderabad in consultation with Home Department in accordance with the procedure laid down by the Director General, Crime Investigation Department. If in the course of any investigation into corruption, misappropriation is noticed by the Anti Corruption Bureau, in such a case the Anti Corruption Bureau, itself will initiate action for prosecution of that case.

16. The Departments of secretariat should consult the Home Department before entrusting any case to the Crime Investigation Department for investigation. To establish the offence of misappropriation, cheating / forgery and use of forged documents utilization of fake certificate etc. it is essential that:

(i) The complaint lodged by competent authority should contain specific information regarding details of crime and persons responsible, amount involved and the matter or made of commission offence.

(ii) The details of crime should contain essential ingredients of cognizable crime.

(iii) Whenever complaint involving misappropriation of public funds is preferred, it should be mandatory to initiate departmental audit to establish the instances and amounts of misappropriation. Steps will be taken by the concerned officers to ensure preservation of original documents i.e. bills vouchers etc. Requisitions should be sent to the Pay and Accounts Officer, Treasury authorities /Accountant General Office with a specific request to preserve the documents which would prove the culpability of persons responsible for such frauds / misappropriation, Specimen signatures and admitted handwritings of persons responsible for misappropriation, fraud etc. should be made available to the investigating agency.

(iv) For expeditious and proper investigation, it is also imperative that relevant records of the case, like forged documents duplicate copies of vouchers audit report, preliminary enquiry report conducted by the respective department, note files, registers etc., are handed over (in original) to the Crime Investigation Department with Xerox copies being retained by the Department concerned for the purpose of disciplinary action and for record.

17. It should be ensured therefore that a comprehensive complaint should be lodged with Crime Investigation Department containing details of the crime / persons responsible for the Commission of such offences that complaints should be lodged with original signature of the officers who are fully acquainted with the facts of the case and have been associated with the preliminary enquiry or departmental enquiry. Copies of relevant documents should also be enclosed along with the complaint. The departments preferring complaints should also ensure collection and safe custody of original document relating to the offence.

18. Handing over of records / sending necessary assistance to Investigating Agencies

All Heads of Offices should handed over the records requisitioned by the local Police officers of the Bureau or the Crime Investigation Department as the case may be and render all necessary assistance to Investigating Officers in either case. Senior Civil Servants who are defacto complaints in Criminal cases or who are intimately acquitted with the facts or circumstances of the case and whose evidence is relevant and material to prove the case in a court of law should tender their evidence when examined by the Investigating Officers of the Crime Investigation Department in a Court of Laws. The investigation should not normally take more than one year after it is entrusted to the Crime Investigation Department /ACB however complicated the case may be.

19 The Government have decided that special cells will be created in the investigation agencies for departments where the number of misappropriation cases are large and persons from these cells, and the Investigation Agency would maintain close Liaison with the departments so that they can tender necessary guidance to expedite cases.

20. In all cases of misappropriation, after investigation is completed by the Police and charge sheets filed, such cases should be pursued effectively to ensure that there is no letup in prosecuting the cases effectively and that there is no failure on the part of the Assistant Public Prosecutor etc., in conducting the prosecution properly. In case, where the trial ultimately ends in acquittal, immediate action may be taken to file appeals, after obtaining legal opinion. Incases, where it is felt that the prosecution was conducted improperly and the prosecuting officers have not taken adequate interest, responsibility must be fixed for their failure to conduct the prosecution successfully.

To ensure a proper watch, the Departments should review all such cases periodically for the half years ending 30/6 and 31/12 of every year and furnish their review to the General Administration (Services) Department. Even when there are no such cases, a 'NIL' report has to be furnished.

21. Attachment and confiscation of the properties of the accused

Whenever it is believed that a scheduled offence is committed, the concerned Departmental Officers should collect the necessary data regarding movable / immovable property standing in the name of th4e persons family members, relatives and friends and orders shall be issued for attachment of the properties under Section 3 and 4 of the Criminal Law Amendment Ordinance, 1944 contemplates that if any person commits any offence punishable under Section 406 , 408, 409, 411, 417, and 420 of the IPC 1860 or under clause (C) of subsection (1) of Section 13 of the P.C. Act 1988 the Government any whether or not any court has taken cognizance of offence, authorize the making of an application to the District Judge concerned for attachment of the money or other property which the State Government believes the said person to have procured by means of the said offence or if such money or property cannot for any reason be attached of other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.

(I) The attachment can be of the money or other property which the State Government believes the said person to have procured by means of the offence or if such money or the property cannot for any reason be attached, or other property of the said person of value as nearly as may be equivalent to that of the aroresaid money or other property.

(II) The District Judge has jurisdiction to issue an interim order of attachment of moneys procured by commission of a scheduled offence and deposited in Bank. Such money in the hands of the bank does not cease to be attachable although its identity is lost by getting mixed up with t he other money of the Bank, so long as it is not converted into any thing else and remains liable to be paid back in cash to the depositor or to his order (K. Satwant Singh Vs. Provincial Government of Punjab, AIR 1946 Law 406)

(III) Where the assets available for attachment are not sufficient and where he is satisfied that the transfer of the property to the transferee was not in good faith and for consideration, the District Judge has power to order the attachment of so much of the transferee's property equivalent to the value of the property transferred, as per section 6 of the Ordinance.

(IV) The court having jurisdiction to entertain the application for attachment of property under the said Ordinance is the court of the District Judge within the local limits of whose jurisdiction the suspect ordinarily resides or carries on his business. A Special Judge while trying an offence punishable under the said Act can exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, as per sub-section (6) of section 5 of the Prevention of Corruption Act, 1988.

(V) The District Judge is empowered under sec. 4(1) of the Ordinance, as also the Special Judge trying an offence punishable under the Prevention of Corruption Act, 1988. to pass an interim order of attachment of the money or other property and to make the an interim order of attachment absolute, under sec. 5 of the Ordinance.

(VI) The order of attachment remains in force for 3 months as per clause (a) of section 10, but the period has been raised to one year by the Prevention of Corruption Act, 1988 as per clause (b) of section 2 thereof. Where a court has taken cognizance of the scheduled offence, the order of attachment continues in force until orders are passed by the Judge, as per clause (b) of Sec. 10 of the Ordinance.

(VII) The District Judge or a Special Judge trying an offence punishable under the P.C. Act, 1988 has power to order forfeiture of the attached property on the termination of the criminal proceedings where the final judgment or order of the criminal court is one of conviction as per sub sec (2) of sec. 13 of the Ordinance.

(VIII) The above provision should be used for attaching the properties of the Government Servant(s) who are found to have misappropriated Government money pending the criminal proceedings and eventual confiscation of the property.

22. Invoking provision of Andhra Pradesh Revenue Recovery Act.

The provisions of Revenue Recovery Act can be invoked for recovery of the misappropriated amounts or loss caused to the Government. Recovery of misappropriated amount or loss caused to Government can be recovered as if it were an arrear of Land Revenue in accordance with the procedure laid down in the A.P. Revenue Recovery Act, where the officer responsible fails to remit the amount to the Government account. It is open to Government to file a civil suit for recovery of such sum as a last resort.

23. Punishments to be awarded in proved cases of misappropriation

There is a wide disparity in the scales of punishment meted out in misappropriation cases The question of prescribing uniform scale of punishment in such cases has been considered by Government . It has been decided that ordinarily cases of proved misappropriation would justify nothing less than dismissal from service and action should accordingly be taken. The minimum, penalty to be imposed in all proven cases of misappropriation (In addition to the recovery of amount misappropriated) is dismissal from service. In case of retired employees the pentalty should be withholding of entire pension and gratuity permanently or withdrawal of pension as the case may be besides recovery of misappropriation/loss amount. There may, however, be rare cases where in the circumstances, such as trivial amount, short duration, immediate payment on detection, all of which may raise a presumption that it was an error in accounting, which may justify a different punishment. A clear distinction should be drawn between the cases of "delayed remittance " and " misappropriation " having regard to the fact that in proved cases of misappropriation no punishment short of dismissal is normally justified and accordingly the case of "delayed remittance" need not always be classified for the purpose of audit as a case of misappropriation.

24. An officer who is convicted by a Criminal Court for the offence of misappropriation or fraud should be dismissed from service without waiting for failing of an appeal or its outcome. Such action would be taken not withstanding suspension of sentence by an Appellate Court. It shall not be necessary to consult the Andhra Pradesh Public Service Commission for taking action to dismiss the officer on the grounds of conviction in a Court of Law. In the case of an officer who in the meantime has retired, his pension and gratuity shall be withheld or where it has already been sanctioned, his pension should be withdrawn. The officer, who fails to enforce these instructions promptly, will be held responsible for any loss to the Government on account of avoidable payment of subsistence allowance or provisional pension as the case may be.

25. Consultation with Vigilance Commission

In all cases of misappropriation, the Vigilance Commissioner has to be consulted in accordance with the procedural instructions of the Commission.

26. **Review of cases**

There should be periodical office inspections by the Heads of Departments and such inspections should invariably cover financial aspects accounts and cases of misappropriation of funds, if any. In the office of Heads of Department one officer may be nominated as Vigilance Officer to keep track of cases involving misappropriation of Government funds. The Chief Vigilance Officers of the Secretariat departments under the Vigilance Officers of Heads of Departments, Public Enterprises , Autonomous Bodies and Cooperative Institutions etc., to keep track of the cases of misappropriation of funds by Government employees.

27. The Finance Department will nominate an officer specially to monitor the pendency and watch progress with reference to statistics that will be furnished to him by the other Departments. This officer would place the statistical data regarding outstanding misappropriation cases for a review of Chief Secretary to Government with Secretaries of Departments periodically.

28. The Secretary of each Department should review each month all cases of misappropriation in his Department and send a copy of the review containing full details to the officer nominated for the purpose in the Finance Department. The Chief Secretary will review these cases with Secretaries to Government once in 6 months to find out whether there are any bottle necks in expediting cases of misappropriation.

29. All the Departments of Secretariat, all the Head of Department and District Collectors are directed to bring these instructions to the notice of their subordinates for their guidance and compliance and enforce strict compliance of these instructions and any deviations in the matter will be viewed seriously.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Dr. MOHANKANDA
CHIEF SECRETARY TO GOVERNMENT.

/ True Copy/

GOVERNMENT OF ANDHRA PRADESH
FOREST DEPARTMENT

Ref.No. 20563/2000/P3.
Dated: 26.02.2005.

Office of the Prl. Chief Conservator of Forests
Andhra Pradesh, Hyderabad.

SRI S.K. DAS, I.F.S.,
PRL. CHIEF CONSERVATOR OF FORESTS

Communicated.

Chandan Mitra
for Prl. Chief Conservator of Forests

To
All the Officers in Distribution List 'A'
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జారీచేయబడినది.
సంతకం:
తేదీ: 29.6.05

/F.C.D.O./

SUPERINTENDENT. 6/6

Re-No. 4638/05-M8 dt -6-05

Communicated.
23/6/05

TO
All the DFOs in the Circle.

24/6/05
23/6/05

ON
After despatch this file may be clubbed with Disc. Cases Stock File.
23/6/05
23/6/05